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JOHN F. DAVIS, CLERK

APPENDIX

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 74

CLIFFORD TAGGART, *ET AL.*,
Petitioners,

v.

WEINACKER'S, INC.,
Respondent.

On Writ of Certiorari to the
Supreme Court of Alabama

Petition for Certiorari Filed March 28, 1969
Certiorari Granted October 13, 1969

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A TRANSCRIPT OF THE RECORD AND PROCEEDINGS OF A CERTAIN CAUSE HERETOFORE PENDING IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA IN EQUITY

At a Regular Session of the Circuit Court of Mobile County, Alabama at which the Officers authorized by law to hold or serve such Court were serving, the following proceedings were had in the cause styled:

WEINACKER'S INC., A Corporation,
Complainant

vs.

Case Number
63,733-McC

CLIFFORD TAGGART, RILEY HOBBS, JAMES STUCKEY, Individually & d/b/a President of Retail Clerks' Union Local 458 of Mobile and RETAIL CLERKS' UNION LOCAL 458 OF MOBILE
Respondents

ORIGINAL BILL AND FIAT

PETITION FOR TEMPORARY AND PERMANENT RESTRAINING ORDER

ONE

Comes your Complainant, Weinacker's, Inc., a corporation, incorporated under the laws of the State of Alabama and having its main office in the City of Mobile, State of Alabama.

TWO

The corporation is in possession and operation of a shopping center on the North side of Government Street between Catherine Street and Macey Street in the City of Mobile, State of Alabama, wherein groceries, drugs and other goods are sold to the general public.

THREE

Weinacker's, Inc., owns the said shopping center and the said shopping center and its parking area and walkways ad-

jacent to the shopping center are the properties of the corporation and are used by the customers of the shopping center.

FOUR

The three individually named Respondents are members of the [2] Respondent Retail Clerk's Union Local 458 of Mobile and are engaged in picketing the shopping center at the above described location in Mobile County, Alabama. The Respondents jointly and separately and as members of the named Union have trespassed on the property of the Complainant and continue to do so after warning and after arrest.

FIVE

The continuous trespassing by the named Respondents has deprived the Complainant of the peaceful possession and enjoyment of its property and premises and the trespassing has interferred with the Complainant's right of peaceful possession of its property and has interferred with the Complainant in the conducting of its business in the operation of the above described shopping center, and the Complainant has been damaged in that he has lost the peaceful use of his property and the right of operating his business without the interference from any unlawful trespass upon its premises.

SIX

The Respondents have walked back and forth in front of the door or doors to the shopping center on the area owned and occupied by the Complainant and in the possession of the Complainant in the operation of its shopping center.

SEVEN

The Respondents are causing irreparable injury to the Complainant by reason of the continuous trespass and interference with the Complainant in and about the Complainant's business and unless the Respondents are enjoined from

trespassing on the private property of the corporation as prayed for herein, the Complainant will be irreparably injured and damaged and it will be a continuous invasion of the property and the property rights of the Complainant by the Respondents and the Complainant does not have an adequate remedy at law to enjoin the continuous trespass by the Respondents upon the Complainant's property and the interference with the Complainant's business and property rights.

WHEREFORE, The Complainant prays that process be issued and that the Complainant be given immediate injunctive relief by posting a bond with good and sufficient sureties as prescribed by this Honorable Court and that the Respondents be enjoined as prayed for herein.

PRAYER FOR RELIEF

WHEREFORE, your Complainant prays that this Honorable Court forthwith issue a temporary writ to enjoin the Respondents directly [3] and indirectly from entering upon property of the Complainant and that they be enjoined from any act on the property of the Complainant which would be a trespass upon the Complainant's property and grant unto your Complainant all other fit and proper relief that it may be entitled to and the Complainant prays to do equity and abide by the rules of this Honorable Court. Court.

/s/ M. A. Marsal
Attorney for the Complainant

STATE OF ALABAMA
COUNTY OF MOBILE

Comes now G. HORACE WEAVER, the undersigned and being by me first duly sworn doth depose and say that he is Assistant Superintendent of Weinacker's, Inc., and is personally acquainted with the facts alleged herein and the facts therein are true and correct.

/s/ G. Horace Weaver

Subscribed and Sworn to before me this 20th day of January, 1965.

/s/ Sandra Dowling
Notary Public, Mobile County, Alabama

Respondent Clifford Taggart's address is 1 South Lawrence Street, Mobile;

Respondent Riley Hobbs' address is 57 North Julia Street, Mobile;

Respondent James Stuckey's address is 1 South Lawrence Street, Mobile;

Respondent Retail Clerks' Union Local 458 of Mobile is located at 1 South Lawrence Street, Mobile.

STATE OF ALABAMA
COUNTY OF MOBILE

Comes now the undersigned and being by me first duly sworn doth depose and say that he is personally acquainted with the fact that the Respondents have trespassed upon the property of the Complainant and that the Complainant, Weinacker's, Inc., is a corporation incorporated under the laws of the State of Alabama and is engaged in the operation of a shopping center on Government Street in the City of Mobile and that the Respondents named in the complaint to which this affidavit is attached have trespassed after warning on the property of Weinacker's, Inc., an Alabama corporation.

/s/ G. Horace Weaver

[4] Subscribed and Sworn to before me this 20th day of January, 1965.

/s/ Sandra Dowling
Notary Public, Mobile County, Alabama

STATE OF ALABAMA
COUNTY OF MOBILE

Comes now the undersigned and being by me first duly sworn doth depose and say that he is personally acquainted with the fact that the Respondents have trespassed upon

the property of the Complainant and that the Complainant, Weinacker's, Inc., is a corporation incorporated under the laws of the State of Alabama and is engaged in the operation of a shopping center on Government Street in the City of Mobile and that the Respondents named in the complaint to which this affidavit is attached have trespassed after warning on the property of Weinacker's, Inc., an Alabama corporation.

/s/ Dewey West

[NOTARIAL SEAL]

Subscribed and Sworn to before me this 21st day of January, 1965.

/s/ Wilhelmina L. Lee
Notary Public, Mobile County, Alabama * * *

FIAT

The foregoing petition for a temporary injunction, pending final hearing of this cause, having been presented to me for fiat and the Court being of the opinion that no substantial injury is likely to result to complainant from delay, it is ordered, adjudged and decreed by the Court that the application for a temporary injunction be and the same is hereby set down for hearing on the 25th day of January 1965, at 9:30 A.M., before me or some other Judge of the Circuit Court of Mobile County, Alabama.

It is further ordered, adjudged and decreed by the Court that notice of the time and place appointed for the hearing of the application be given the respondent(s) named therein, such notice to be given them at least three days prior to the hearing of the application and that they be served with a copy of the bill of complaint.

ORDERED, ADJUDGED AND DECREED by the Court this 21st day of [5] January, 1965.

/s/ Dan T. McCall, Jr.
Circuit Judge

Filed January 21, 1965
/s/ W. Elsworth Haughton, Register

SUBPOENA

CIRCUIT COURT OF MOBILE COUNTY,
AT MOBILE, ALABAMA, (In Equity)

THE STATE OF ALABAMA)
MOBILE COUNTY)

To Any Sheriff of the State—Greetings:

You are hereby commanded to summon CLIFFORD TAGGART; RILEY HOBBS, JAMES STUCKEY, Individually and as PRESIDENT OF RETAIL CLERKS' UNION LOCAL 458 OF MOBILE; & RETAIL CLERKS' UNION LOCAL 458 OF MOBILE to appear and plead, answer or demur, within thirty days from the service hereof, to a Bill of Complaint/& FIAT filed in the Circuit Court of Mo- [illegible] which is hereto attached), against YOU AND EACH OF YOU Defendant, by WEINACKER'S INC., ETC., Complainant.

Witness my hand, this 21st day of January 1965.

/s/ W. Elsworth Haughton
Register

Received on the 21st day of January, 1965 and on the 21st day of January, 1965 I served copies of the within subpoena and copies of the Bill of Complaint on Riley Hobbs and James Stuckey, individually and as President of Retail Clerks' Union Local 458 of Mobile and on the 22nd day of January, 1965 by service on Clifford Taggart and Retail Clerks' Union Local 458 of Mobile by service on Clifford Taggart, Sec.-Treas.

Ray D. Bridges, Sheriff
By s/ H. Davis
s/ J.W. Lloyd D.S.
s/ M. Books

NOTICE OF HEARING APPLICATION

The State of Alabama) Circuit Court of Mobile County
Mobile County) In Equity

To CLIFFORD TAGGART, RILEY HOBBS, JAMES STUCKEY, INDIVIDUALLY AND AS PRESIDENT OF RETAIL CLERKS' UNION LOCAL 458 OF MOBILE; AND RETAIL CLERKS' UNION LOCAL 458 OF MOBILE,

Greetings:

[6] You will please take notice, that in a certain cause pending in the Circuit Court of Mobile County at Mobile, Alabama, Equity Side, wherein WEINACKER'S INC., ETC., Complainant, CLIFFORD TAGGART, ET AL., Defendant, AN APPLICATION FOR A TEMPORARY INJUNCTION has been filed by WEINACKER'S INC., ETC. and that said APPLICATION will be heard by the Hon. Dan T. McCall, Jr., a Judge of said Court, on the 25th day of January A.D., 1965 at 9:30 o'clock A.M.

Witness, W. Elsworth Haughton, Register of said Circuit Court, at office this 21st day of January A.D. 1965.

s/ W. Elsworth Haughton
Register

Received on the 21st day of January, 1965 and on the 21st day of January, 1965 I served copies of the within notice of hearing application and also copies of the Bill of Complaint on Riley Hobbs and James Stuckey, individually and as President of Retail Clerks' Union Local 458 of Mobile and on the 22nd day of January, 1965 by service on Clifford Taggart and Retail Clerks' Union Local 458 of Mobile by service on Clifford Taggart, Sec.-Treas.

Ray D. Bridges, Sheriff
By: s/ H. Davis
s/ J. W. Lloyd D.S.
s/ M. Books

[REVERSE SIDE:]

Received January 21, 1965, Sheriff's Office

MOTION TO QUASH

Come now the Respondents in the above styled cause, by and through one of their Solicitors, appearing specially for the sole purpose of filing this Motion to Quash the entire bill and each and every aspect thereof, and for no other purpose whatsoever on the grounds that:

1. This Honorable Court has no jurisdiction over a lawful strike and the peaceful picketing activities connected therewith.

[7] 2. The National Labor Relations Board, federal statutes and procedures have preempted this field and therefore this court has no jurisdiction.

3. State courts lack jurisdiction to regulate union conduct that is potentially subject to exclusive regulation under the Labor Management Relations Act.

4. Peaceful conduct that is arguably protected or prohibited by the Federal Labor Management Relations Act is not subject to state regulation.

Simon and Wood
Solicitors for Respondent
By: s/ Otto E. Simon

Certificate of Service

I do certify that I have on this 22nd day of January, 1965, served a copy of the foregoing pleading on counsel for all parties to this proceeding by mailing the same by United States mail, properly addressed and first class postage prepaid.

Simon and Wood
By: s/ Otto E. Simon

Filed January 22, 1965
s/ W. Elsworth Haughton, Register

ORDER OF CONSOLIDATION

It appearing to the Court that in the above styled cause and cause No. 63,733-McC on the docket of this Court the parties to the suit and the subject matter is one and the same and that it would be to the best interests that this cause be consolidated, it is ORDERED, and DECREED by the Court that the above styled cause be and the same hereby is consolidated into Cause No. 63,733-McC and the original bill in this cause be treated as a amendment to the bill of complaint in cause No. 63,733-McC and that all future litigation in regard to same shall be filed in cause No. 63,733-McC.

Dated, January 25, 1965.

/s/ Dan T. McCall, Jr.
Judge

PETITION FOR IMMEDIATE INJUNCTIVE RELIEF

Comes now your Petitioner and shows unto the Court as follows:

ONE

On January 21, 1965 this Honorable Court issued a fiat to the named Respondents ordering the request for an injunction to be set for a hearing at 9:30 Monday, January 25, 1965.

TWO

After receiving this notice actual or constructive, the Respondents [Clifford Taggart & Riley Hobbs (in ink)] have proceeded to constantly trespass upon the Complainant's property by marching or parading back and forth to the immediate doorway of the Complainant's place of business. Your Petitioner alleges that this conduct has been more intensive since the Court entertained the Complainant's petition and set the cause for hearing as described above and that such action on the part of the Respondents are at this time causing an irreparable injury to the Complainant

in that the actions of the Respondents constitute obstructing customers from entering and leaving the Complainant's place of business and the Complainant alleges that the acts are outside the realms of peaceful picketing and constitute an immediate invasion of his property and his property rights contrary to the laws of the State of Alabama and the Constitution of the United States of America.

THREE

Your Complainant alleges that it is necessary to receive immediate injunctive relief to enjoin the continuous obstructing of the doorway to the Complainant's shopping center and that the Petitioner has no adequate remedy at law other than the facilities of this Honorable Court by enjoining the Respondents from such acts.

FOUR

Your Complainant respectfully prays that this Honorable Court issue a temporary writ of injunction after requiring the Complainant to enter into a bond with good and sufficient sureties as required by this Honorable Court.

WHEREFORE, your Petitioner respectfully prays that the allegations of the Petition filed in this Court in this original cause as of January 21, 1965 be adopted and made a part hereof and that this Honorable Court forthwith order the Respondents and agents, servants or employees [and any and all persons acting in concert with (in ink)] from trespassing upon the property of the Complainant and from further interfering with the Complainant's property and right [9] of ingress and egress to the Complainant's property and place of business and grant unto the Complainant all other fit and proper relief that the Complainant might be entitled to and shows unto the Court that an irreparable injury will result unless this Honorable Court grant the relief as so prayed.

/s/ M. A. Marsal
Attorney for Complainant

STATE OF ALABAMA
COUNTY OF MOBILE

Comes now Dewey West, the undersigned, and being by me first duly sworn doth depose and say that he is personally acquainted with the facts alleged herein and the facts therein are true and correct.

/s/ Dewey West

Subscribed and sworn to before me on this 22nd day of January, 1965

/s/ Gloria Lane
Notary Public, Mobile County, Ala.
State of Alabama At Large * * *

(NOTARIAL SEAL)

MOBILE, ALABAMA, JANUARY 22nd, 1965.

To the Register of the Circuit Court of Mobile County, Alabama:

Let temporary writ issue as prayed for in the complaint and upon complainant entering into bond in the sum of TWO THOUSAND & no/100 $2,000.00 – conditioned as provided by law. Bond to be approved by you.

/s/ Dan T. McCall, Jr.
Circuit Judge

STATE OF ALABAMA
COUNTY OF MOBILE

Comes now the undersigned and after being duly sworn doth depose and say that he/~~she~~ has direct knowledge of the fact that on January 22, 1965 the Respondents have trespassed upon the Complainant's property to the extent of obstructing the customers in entering and leaving the door of Weinacker's, Inc. on Government Street in the City of Mobile and that the Respondents in carrying signs are acting in such a way as to interfere with the Complainant's business and such action is on the private property of the Complainant's corporation.

[10] /s/ G. Horace Weaver

Subscribed and sworn to before me on this 22nd day of January, 1965.

/s/ Gloria Lane
Notary Public, Mobile County,
Alabama * * *

(NOTARIAL SEAL)

STATE OF ALABAMA
COUNTY OF MOBILE

Comes now the undersigned and after being duly sworn doth depose and say that he/she has direct knowledge of the fact that on January 22, 1965 the Respondents have trespassed upon the Complainant's property to the extent of obstructing the customers in entering and leaving the door of Weinacker's, Inc. on Government Street in the City of Mobile and that the Respondents in carrying signs are acting in such a way as to interfere with the Complainant's business and such action is on the private property of the Complainant's corporation.

/s/ Thelma Burroughs

Subscribed and sworn to before me on this 22nd day of January, 1965.

/s/ Gloria Lane
Notary Public, Mobile County,
Alabama * * *

(NOTARIAL SEAL)

STATE OF ALABAMA
COUNTY OF MOBILE

Comes now the undersigned and after being duly sworn doth depose and say that he/she has direct knowledge of the fact that on January 22, 1965 the Respondents have trespassed upon the Complainant's property to the extent of obstructing the customers in entering and leaving the door of Weinacker's, Inc. on Government Street in the City of Mobile and that the Respondents in carrying signs are acting in such a way as to interfere with the Complainant's business and such action is on the private property of the Complainant's corporation.

/s/ Mary Richardson

Subscribed and sworn to before me on this 22nd day of January, 1965.

/s/ Gloria Lane
Notary Public, Mobile County,
(NOTARIAL SEAL) Alabama * * *

STATE OF ALABAMA
COUNTY OF MOBILE

[10A] Comes now the undersigned and after being duly sworn doth depose and say that she has direct knowledge of the fact that on January 22, 1965 the Respondents have trespassed upon the Complainant's property to the extent of obstructing the customers in entering and leaving the door of Weinacker's, Inc. on Government Street in the City of Mobile and that the Respondents in carrying signs are acting in such a way as to interfere with the Complainant's business and such action is on the private property of the Complainant's corporation.

/s/ Myrtis Chaillot

Subscribed and sworn to before me on this 22nd day of January, 1965.

/s/ Gloria Lane
Notary Public, Mobile County,
(SEAL) Alabama * * *

STATE OF ALABAMA
COUNTY OF MOBILE

Comes now the undersigned and after being duly sworn doth depose and say that he has direct knowledge of the fact that on January 22, 1965 the Respondents have trespassed upon the Complainant's property to the extent of obstructing the customers in entering and leaving the door of Weinacker's, Inc. on Government Street in the City of Mobile and that the Respondents in carrying signs are acting in such a way as to interfere with the Complainant's business and such action is on the private property of the Complainant's corporation.

/s/ Eddie B. Turner

Subscribed and sworn to before me on this 22nd day of January, 1965.

/s/ Gloria Lane
Notary Public, Mobile County,
Alabama * * *

(SEAL)

STATE OF ALABAMA
COUNTY OF MOBILE

[11] Comes now the undersigned and after being duly sworn doth depose and say that he/she has direct knowledge of the fact that on January 22, 1965, the Respondents have trespassed upon the Complainant's property to the extent of obstructing the customers in entering and leaving the door of Weinacker's, Inc. on Government Street in the City of Mobile and that the Respondents in carrying signs are acting in such a way as to interfere with the Complainant's business and such action is on the private property of the Complainant's corporation.

/s/ Mildred Weninegar

Subscribed and sworn to before me on this 22nd day of January, 1965.

/s/ Gloria Lane
Notary Public, Mobile County,
Alabama * * *

(NOTARIAL SEAL)

Filed January 22, 1965
/s/ W. Elsworth Haughton, Register.

Writ of Injunction

CIRCUIT COURT OF MOBILE COUNTY
IN EQUITY

THE STATE OF ALABAMA }
MOBILE COUNTY }

To Any Sheriff of the State of Alabama-Greeting:

WE COMMAND YOU, That, without delay, you execute this writ, and due return thereof how you have executed the same make to us.

To CLIFFORD TAGGART, RILEY HOBBS, JAMES STUCKEY, INDIVIDUALLY & AS PRESIDENT OF RETAIL CLERKS' UNION, LOCAL 458 OF MOBILE: RETAIL CLERKS' UNION LOCAL 458 OF MOBILE.

WHEREAS WEINACKER'S INC., ETC. has this day filed ITS ORIGINAL Bill of Complaint in said Court against CLIFFORD TAGGART, RILEY HOBBS, JAMES STUCKEY, INDIVIDUALLY & AS PRESIDENT OF RETAIL CLERKS' UNION, LOCAL 458 OF MOBILE: RETAIL CLERKS' UNION LOCAL 458 OF MOBILE praying, among other things, that THE ABOVE RESPONDENTS AND AGENTS, SERVANTS OR EMPLOYEES AND ANY AND ALL PERSONS ACTING IN CONCERT WITH BE RESTRAINED AND ENJOINED FROM TRESPASSING UPON THE PROPERTY OF THE COMPLAINANT AND FROM FURTHER INTERFERING WITH THE COMPLAINANT'S PROPERTY AND RIGHT OF INGRESS TO THE COMPLAINANT'S PROPERTY AND PLACE OF BUSINESS.

AND WHEREAS, on said Bill being exhibited to the Hon. DAN T. MCCALL, JR. a Judge of the Circuit Court of Mobile County, Alabama, on the 22nd day of January A.D., 1965, he did order that upon Complainants entering into Bond with sureties in the sum of TWO THOUSAND & no/100 ($2,000.00)—Dollars, payable to and approved by the Register of this Court, and conditioned according to law, a Writ of Injunction issue out of said Court according to

the prayer of said Bill: And Whereas, bond has been given and approved as required by said order.

These, therefore, are to COMMAND AND STRICTLY ENJOIN you, and each of you, from—TRESPASSING UPON THE PROPERTY OF THE COMPLAINANT AND FROM FURTHER INTERFERING WITH THE COMPLAINANT'S PROPERTY AND RIGHT OF INGRESS AND EGRESS TO THE COMPLAINANT'S PROPERTY AND PLACE OF BUSINESS, until the further orders of this Court. And this you will in no wise omit under penalty, &c.

WITNESS, W. ELSWORTH HAUGHTON, Register of the Circuit Court of Mobile County, Alabama, Equity Side, this 22nd day of January A.D. 1965.

/s/ W. ELSWORTH HAUGHTON
Register of the Circuit Court of Mobile County, Alabama

[Executions Omitted]

---

[15] **AMENDED BILL AND FIAT**

Pursuant to an order of Court dated January 25, 1965, the Petition for Immediate Injunctive Relief and Fiat, originally filed January 22, 1965 and set out on Page 8 of this transcript, is now "treated as an amendment" to the original bill set out on Page 1 of this transcript and therefore is not recopied at this point.

PLEA TO THE JURISDICTION

Come now the Respondents in the above styled cause by and through their Solicitor, appearing specially for the sole purpose of filing this plea to the jurisdiction and for no other purpose and without waiving any other defenses which they may have in law or in equity, respectfully show the court the following facts:

ONE

The Respondent, Retail Clerks Union, Local 458 of Mobile, is an unincorporated voluntary association of individuals and is a labor organization within the meaning of the National Labor Relations Act, [16] as amended (29) U.S.C. Paragraph 151, et seq.),

TWO

The individual respondents, Clifford Taggart, Riley Hobbs, and James Stuckey, individually and as President of Retail Clerks Union, Local 458 of Mobile, Alabama, are members of such organization.

THREE

The Complainant, Weinacker's, Inc., a corporation, is an employer within the meaning of the National Labor Relations Act, as amended.

FOUR

The Respondent Union has as its members and represents in matters of collective bargaining with their employers in Mobile, Alabama, area, persons who are retail

clerks who work in shopping centers and grocery stores in selling to the general public. It has collective bargaining agreements in effect with numerous other retail stores in Mobile, Alabama, and in the surrounding area covering wages, hours and conditions of employment of the clerks employed by these retail outlets. The members of such organization have worked long and diligently for many years to establish high working standards and beneficial wage levels.

FIVE

Respondents, Retail Clerks Local 438 of Mobile, Alabama, AFL-CIO, "hereinafter referred to as the Union", began an organizational campaign in Complainant's Mobile, Alabama, operations in the latter part of August or September, 1963. On December 19, 1963, the Union filed a petition with the National Labor Relations Board seeking certification of certain employees at Complainant's Mobile, Alabama, operations. (See *Exhibit No. 1*, which is attached hereto and made a part hereof.)

SIX

On January 20, 1964, a representation hearing was conducted by the National Labor Relations Board.

SEVEN

On February 13, 1964, Charles M. Paschal, Jr., Acting Regional Director for the Fifteenth Region, National Labor Relations Board, acting upon the entire record, issued a decision and direction of election. His findings were as follows:

> 1. The employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert [17] jurisdiction herein.
>
> (The Board found that in the twelve months prior to the petition that the Complainant, in conducting its business, sold and distributed products, the gross value of which exceeds $500,000, and the Complainant received goods and materials valued in excess of $50,000 shipped di-

rectly to it in the State of Alabama from points outside the State of Alabama.)

2. The labor organization named below claims to represent certain employees of the employer.

3. A question effecting commerce exists concerning the representation of certain employees of the employer, within Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The following employees of the employer constitute a unit appropriate for the purpose of collective bargaining within Section 9(b) of the Act:[2]

> All full-time and regular part-time employees at Employer's Mobile, Alabama, retail operation, including office clerical employees and the grocery, produce, meat, drug warehouse and service station departments, excluding employees in the snack bar, professional employees[3], watchmen and/or guards and supervisors[4] as defined in the Act.

(A copy of the decision of Charles M. Paschal, Jr., Acting Regional Director for the Fifteenth Region, dated February 13, 1964, is attached as *Exhibit No. 2* and made a part hereof.

EIGHT

On March 9, 1964, a representation election was conducted among the employees in the unit found appropriate. (A copy of NLRB Form 707, NOTICE OF ELECTION, and NLRB Form 760, TALLY OF THE VOTES, *Exhibit No. 3* are attached hereto and made a part hereof.)

NINE

On March 13, 1964, the Complainant timely filed objection to the election. (A copy of said objection is attached hereto and made a part hereof as *Exhibit No. 4*).

TEN

After the objections were investigated and on April 16, 1964, the [18] Regional Director for the Fifteenth Region

issued a Supplemental Decision and Certification of Representation, certifying the Union as bargaining representative in the unit be found appropriate. (A copy of this is attached hereto and made a part hereof as *Exhibit No. 5*.)

ELEVEN

On April 25, 1964, Complainant filed a request for review of the Regional Director's Supplemental Decision and Certification of Representative. (A copy of said Request for Review is attached hereto and made a part hereof as *Exhibit No. 6*.)

TWELVE

On May 22, 1964, the National Labor Relations Board, Washington, D.C., denied Complainant's Request for Review:

> Washington, D.C., 5-22-64
>
> Re: Weinacker Brothers, Inc. 15-RC-2850
>
> It is hereby ordered that the Employer's Request for Review of the Regional Director's Supplemental Decision and Certification of Representative, be and it hereby is, denied as it raises no substantial issue warranting review.
>
> By direction of the Board
>
> Howard W. Kleeb,
> Associate Executive Secretary
> 15-RC-2850
> GLP 1510-R

(A copy of this telegram of the decision of the National Labor Relations Board is attached hereto and made a part hereof as *Exhibit No. 7*.)

THIRTEEN

During the year 1964, Local 458, Retail Clerks International Association, AFL-CIO, and other members of the Union, filed the following Unfair Labor Charges with the National Labor Relations Board, Fifteenth Region:

Lorenzo Mathews, an individual	Case No. 15-CA-2486-1
Harry W. Wright, an individual	Case No. 15-CA-2486-2

Local 458, Retail Clerks International Association, AFL-CIO,	Cases No. 15-CA-2486-3
	15-CA-2486-4
	15-CA-2486-5
	15-CA-2486-6
	15-CA-2486-8
	15-CA-2486-12
Elizabeth Boyette, an individual	Case No. 15-CA-2486-15
Donald Harris, an individual	Case No. 15-CA-2486-17
Jack Willis Smith, an individual	Case No. 15-CA-2486-18
Local 458, Retail Clerks International Association, AFL-CIO,	Case No. 15-CA-2501

These unfair labor charges allege that the Complainant, Weinacker's, during the period of December, 1963, through April, 1964, through a Supervisor, violated Section 8(a)(1) of the National Labor Relations Act by certain specified acts of interrogation, threats, surveillance, [19] and the promulgation and enforcement of an unlawful no-solicitation rule.

FOURTEEN

The Respondents, in their unfair labor charges, also allege the discharge and violation of Section 8(a)(3) of the National Labor Relations Act of a number of employees during this period of time.

Respondents filed other petitions further alleging additional violations of Section 8(a)(3) of the National Labor Relations Act by the Complainant in providing for less employment for certain employees than they normally received prior to the National Labor Relations Board election.

Respondent-Union also filed unfair labor charges with the National Labor Relations Board, Fifteenth Region, during the year 1964 alleging violations of Section 8(a)(5) of the National Labor Relations Act, based on the following:

a. The failure of the Complainant, Weinacker's to meet with the Union subsequent to the union certifica-

tion on April 20, 1964, from that date until August 11, 1964.

b. Failure of Complainant to furnish information requested by the Union.

c. Complainant's unilateral changes in terms and conditions of employment of employer in the unit without notification to the bargaining union.

d. Bad faith on the part of the Complainant in initially failing to meet with the Union as certified bargaining representative, and with any meeting of the union and failing to bargain in good faith.

FIFTEEN

On the 31st day of August, 1964, John F. LeBus, Regional Director of the National Labor Relations Board, Fifteenth Region, located at New Orleans, Louisiana, issued an order consolidating the cases, complaints, and the notice of hearing. (A copy of said Consolidation of Cases, Complaints and Notice of Hearing is attached hereto and made a part hereof as *Exhibit No. 8*)

SIXTEEN

On the 16th day of September, 1964, Fred A. Lewis, Acting [20] Regional Director, National Labor Relations Board, Fifteenth Region, issued an Amendment to the Complaint. (A copy of said Amendment is attached hereto and made a part hereof as *Exhibit No. 8-A*.)

SEVENTEEN

On the 30th day of September, 1964, John F. LeBus Regional Director of the National Labor Relations Board Fifteenth Region, issued an Order to the Amendment of the Complaint. (A copy of said Order is attached hereto and made a part hereof as *Exhibit No. 8-B*.)

EIGHTEEN

On the 10th day of September, 1964, the Complainant, Wemacker Brothers, Inc., filed with the National Labor Re

lations Board, Fifteenth Region, an Answer to the Complaint issued by the said Board. (A copy of the Answer is attached hereto and made a part hereof as *Exhibit No. 9-A*)

NINETEEN

On the 22nd day of September, 1964, the Complainant, Wemacker's, Inc., filed an amendment to its answer before the National Labor Relations Board, Fifteenth Region. (A copy of said amended answer is attached hereto and made a part hereof as *Exhibit 9-B*).

TWENTY

On the 12th day of October, 1964, at 10:00 A.M., a hearing on the Unfair Labor Charges was heard by the Honorable Stanley Gilbert, Trial Examiner, Division of Trial Examiners, National Labor Relations Board, Washington, D.C. 20570. The decision of the Trial Examiner on the numerous unfair labor practices has not been rendered as of the filing of this plea.

TWENTY ONE

The Respondent Union, since the time of their certification as the bargaining agent on April 16, 1964, up until the present time, have always been willing and ready to negotiate wages, working conditions, etc., for the employees of Wemacker's that are included in the Unit set up by the National Labor Relations Board. The Company has refused to bargain in good faith and that refusal led to a strike which was started by the Respondents on the 12th day of December, 1964.

TWENTY TWO

At all times during the strike from December 12, 1964 up until the present time the strike has been carried out in accordance with Federal laws and the laws of the State of Alabama. At no time has there [21] been any force or violence resulting from the peaceful picketing on the part of the Respondents.

TWENTY-THREE

Complainant's business affects interstate commerce within the meaning of the National Labor Relations Act, and its labor relations are subject to the exclusive jurisdiction of the National Labor Relations Board

TWENTY-FOUR

Respondent further shows that their activities constitute concerted activity for their mutual aid and protection, the right to engage in which is guaranteed and protected by the National Labor Relations Act (29 USC 157, 163.)

TWENTY-FIVE

Respondent further shows the court that Title 29, Paragraphs C-1 and C-2 read as follows

> "C-1 The Board, in its discretion, may, by rule of decision or by published rules adopted pursuant to the Administrative Procedure Act, decline to assert jurisdiction over any labor dispute involving any class or category of employers, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant exercise of this jurisdiction Provided, that the Board shall not decline to assert jurisdiction over any labor dispute of which it would assert jurisdiction under the standard prevailing upon August 1, 1959."
>
> "C-2 Nothing in this subchapter shall be deemed to prevent or bar any agency of the courts of any state or territory (including the Commonwealth of Puerto Rico, Guam, and the Virgin Islands) from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to Paragraph (1) of this subsection, to assert jurisdiction As amended September 14, 1959, Public Law 86-257, Vol 7, Paragraph 701(a) 73 Statute 551."

TWENTY-SIX

Respondent has shown that the National Labor Relations Board assumed jurisdiction over the subject matter of Com-

TWENTY-SEVEN

Respondent further shows that all their activities have been legal under Federal law and Alabama law and to enjoin the same would infringe upon the rights of the Respondents herein and all the members of the Respondent Local 458, Retail Clerks International Association, AFL-CIO, [22] under the First and Fourteenth Amendment to the Constitution of the United States.

TWENTY-EIGHT

Respondents further show that since the National Labor Relations Board had assumed jurisdiction in this case and therefore pre-empted the jurisdiction of the Circuit Court of Mobile County, Alabama, for this Honorable Court to assume jurisdiction to grant relief on Complainant's bill of injunction or Complainant's amended bill would be unconstitutional and invalid and in derogation of the authority granted to the Congress of the United States by Article I, Section 8, Paragraph 3, of the Constitution of the United States to regular interstate commerce, and of Article VI, Paragraph 2, of the Constitution of the United States providing that the Constitution and laws of the United States are the supreme law of the land, and anything in the Constitution or law of any state to the contrary notwithstanding because pursuant to such power the Congress has assumed jurisdiction over the subject matter of the bill of injunction and has empowered the National Labor Relations Board to grant relief with respect thereto by enacting the National Labor Relations Act, as amended, 29 USC 151, et seq.)

WHEREFORE, Respondents pray that this plea be considered and sustained and that Complainant's bill for an injunction be dismissed, and the temporary restraining order heretofore issued on the amended complaint be dissolved and that the original complaint and amended bill of complaint be dismissed and that damages and costs be assessed upon the Complainant.

WHEREFORE, Respondents further pray the court that, if they are mistaken in the relief sought or should other relief be appropriate or be shown proper, they pray such other, further and additional relief as they may show themselves entitled to receive, premises considered.

Respectfully submitted,

Simon and Wood
By s/ Otto I. Simon
Solicitor for Respondents

STATE OF ALABAMA)
COUNTY OF MOBILE)

Personally appeared before me, the undersigned Notary Public for [28] the State of Alabama-at-Large, Clifford Taggart, Business Agent of Local 158 of the Retail Clerks International Association, AFL-CIO, who, after being first duly sworn, deposes and says that the facts alleged in the above and foregoing Plea to the Jurisdiction are true.

s/ Clifford Taggart

Sworn to and subscribed before me on this the 24th day of January, 1963.

s/ James C. Wood
Notary Public, State of
Alabama at Large

[Certificate of Service Omitted in Printing]

RESPONDENT'S EXHIBIT NO. 1

Form NLRB 502 (3-55) — Form approved Budget Bureau No. 64-R002.9.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

PETITION

When this Petition is filed by a labor organization or by an individual or group acting in its behalf, the Petition will not be processed unless the labor organization and any national or international of which it is an affiliate or constituent unit have complied with section 9(f), (g), and (h) of the National Labor Relations Act [illegible]

Do Not Write in This Space
Case No. 15-RC-2850
Date Filed Dec. 19, 1963
Compliance Status Check By:

INSTRUCTIONS. Submit an original and four(4) copies of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.

If more space is required for any one item, attach additional sheets, numbering item accordingly.

SUBMISSION OF PROOF OF INTEREST. Except when this Petition is filed by an employer under section 9(c)(1)(B) of the act, there must be submitted with the Petition proof of interest in the form of dated authorization of membership application cards or other documentary evidence signed by employees, together with an alphabetical list of their names.

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper [24] authority.

1. Purpose of this Petition (Check only the one box which is appropriate)

A. X RC - CERTIFICATION OF REPRESENTATIVES (INDIVIDUAL, GROUP, LABOR ORGANIZATION)
A substantial number of employees wish to

be represented for purposes of collective bargaining by Petitioner, and Petitioner desires to be certified as representative of the employees for purposes of collective bargaining, pursuant to section 9(a) and (c) of the act.

B. RM- REPRESENTATION (EMPLOYER) One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner as defined in section 9(a) of the act.

C. RD- DECERTIFICATION. A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative as defined in section 9(a) of the act.

D. UD- WITHDRAWAL OF UNION SHOP AUTHORITY. Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded

2. Name of Employer: Weinacker's
Employer Representative to Contact: Bob Weinacker
Phone No.: 473-7414

3. Addresses(es) of Establishment(s) Involved (Street and number, city, zone, and State):
1550 Government Street, Mobile, Alabama.

4a. Type of Establishment (Factory, mine, wholesaler, etc.); 4b. Identify Principal Product or Service
Grocery, Drugs Service Station and Grocery Warehouse.

5. Description of Unit Involved (If more space is needed continue on another sheet)

Included
All full and regular part time employees working in the Grocery, Produce, Meat, Drug, Warehouse, Filling Station and office

Excluded

Store Managers and Employees working in the Snack Bar and Watchmen and Guards and Supervisors as defined in the act.

6a. Number of Employees in Unit: 40.

6b. Is this petition supported by 30% or more of the employees in the unit? Yes.

(If you have checked box 1A (RC) above, check and complete EITHER item 7a or 7b, whichever is applicable):

X 7a. Request for recognition as Bargaining Representative was made on December 18, 1963 and employer declined recognition on or about December 18, 1963. (If no reply received, so state)

7b. * * *

8. Recognized or Certified Bargaining Agent (If there is none, so state): [25] None.

[Filing date illegible]

9. Date of Expiration of Current Contract, if any (Show month, day and year): None.

* * * * *

11. Parties or Organizations Other Than Petitioner Which Have Claimed Recognition as Representatives, and Other Union Interested in the Employees Described in Item 5 Above (If none, so state): None.

12. If you have checked box 1A(RC) above, list locals or other affiliates of Petitioner having or soliciting members among the employees in the unit involved, or which will serve such employees in the event the Petitioner is certified as their representative (If none, so state): None.

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

Retail Clerks International Association AFL-CIO Local Union No. 458

(Petitioner and affiliation, if any)

By s/ Clifford E. Taggart, Secy-Tres.
(Signature of representative of person filing petition)

Address: Clifford E. Taggart
No. 1 South Lawrence Street,
Mobile, Alabama Phone: 432-3330

Willfully False Statement on this Petition can be punished by Fine and Imprisonment (U.S. Code, Title 18, Section 1001) [illegible]

RESPONDENT'S EXHIBIT No. 3

Form NLRB 4477 5-61

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Weinacker Brothers, Inc., Employer[1]

and

Retail Clerks International Association, AFL-CIO, Local Union No. 458, Petitioner — Case No. 15-RC-2850

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before a hearing officer of the National Labor Relations Board. His rulings made at the hearing are free from prejudicial error and are affirmed.

Pursuant to Section 3(b) of the National Labor Relations Act, the [26] Board has delegated its powers herein to the undersigned Regional Director.

Upon the entire record, the Regional Director finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

[1] The name of Employer appears as corrected at the hearing.

2. The labor organization(s) named below claim(s) to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer, within Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within Section 9(b) of the Act:[2]

> All full-time and regular part-time employees at Employer's Mobile, Alabama, retail operation, including office clerical employees and the grocery, produce, meat, drug warehouse and service station departments, excluding employees in the snack bar, professional employees[3] watchmen and/or guards and supervisors[4] as defined in the Act.

[2]The unit is in accordance with the stipulation of the parties.

[3]The parties stipulated at the hearing that the pharmacists are supervisors within the meaning of the Act. Subsequent to the hearing, Employer requested, with a supporting affidavit, that it be permitted to withdraw from the stipulation on the grounds that its counsel was not informed of the duties of the pharmacists at the time of the hearing, and subsequent information indicated that the pharmacists were not supervisory. This request is granted. However, the pharmacists do fill prescriptions, and, consequently, are professional employees within the meaning of the Act. Under Section 9(b)(1) of the Act, I am precluded from including professional employees in a unit with non-professional employees, unless a majority of the professional employees vote for inclusion in the unit. Ordinarily, a self-determined election among the pharmacists would be directed. However, since Petitioner does not seek to represent the professional employees and has made no showing of interest among them, I shall not conduct a separate election among the pharmacists, but shall exclude them from the unit. *Liggett Drug Company, Inc.*, 110 NLRB 949, 950.

[4]The parties stipulated that the office manager, drug manager, service station manager, meat market manager, grocery manager, and

DIRECTION OF ELECTION

An election by secret ballot will be conducted by the undersigned Regional Director among the employees in the unit found appropriate at the time and Place set forth in the notice of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike, commenced less than twelve (12) months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been reinstated before the election date, and employees engaged in an economic strike which commenced more than twelve (12) months before the election date and who have been permanently replaced.

Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Retail Clerks International Association, AFL-CIO, Local Union No. 455.

Dated February 27, 1964

(check mark)
at New Orleans, Louisiana

/s/ Charles M. Paschal, Jr.
Acting Regional Director for
the 15th Region

RESPONDENT'S EXHIBIT NO. 1

NLRB-0[illegible]

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

NOTICE OF ELECTION

RIGHTS OF EMPLOYEES

Under Section 7 of the National Labor Relations Act employees have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities.

PURPOSE OF ELECTION

An election by secret ballot will be conducted under the supervision of the Regional Director of the National Labor Relations Board among the eligible voters described herein, to determine the representative, if any, desired by them for the purpose of collective bargaining with their employer.

SECRET BALLOT

The election ballots by SECRET ballot. Voters will be allowed to vote without interference, restraint or coercion

near the ice cream case, [37] which is some 12 to 15 feet from the doors into the voting area. While Stuckey was standing there, a Mr. Turner and his wife came up. Turner's wife proceeded ahead into the voting room.[4] Mr. Turner and Mr. Stuckey talked for awhile near the ice cream case. Mr.[5] Tew was then sent by assistant supervisor Weaver to have Turner and Stuckey move away from the area because Mr. Weaver considered they were too close to the voting room entrance. After a short discussion with Mr. Tew,[6] Turner and Stuckey went to the drugstore section of the store and had coffee. Staying possibly 5 to 10 minutes, the two men then returned to the area near the food case, about 12 feet from the entrance to the voting room. Soon thereafter Mr. Weaver again sent Mr. Tew back to have them move away. Mr. Tew on this occasion had the Employer's observer, Elliott, and Petitioner's observer, Smith, with him. After a short discussion wherein Tew told Stuckey he didn't have to leave, but only move away from the area near the voting room, Stuckey and Turner went to the front of the store.

Stuckey was known by possibly half of the eligible voters, who might have met him at union meetings. Approximately one-half of the eligible voters had voted in the first session, leaving approximately one-half to vote in the second session. Stuckey[7] had no identification visible which would link him to the Petitioner: he did not wear any insignia, he did not hand out leaflets, and he did not electioneer. There was no evidence submitted and none was found during the investigation to establish that

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[4]Mildred Turner cast a challenged ballot and the undersigned has sustained the challenge. See challenge section of this decision. Her husband has no connection with Weinacker's. He is employed by the U. S. Government and is not a member of any union or in any manner an agent of the Petitioner.

[5]Also a challenged voter.

[6]No electioneering occurred.

[7]Neither did Turner.

Stuckey electioneered or discussed the Union or the election with anyone. There was no indication that he was attempting to see into the voting area. The evidence only shows that a local union official brought a voter to the polls and remained until the voter cast his ballot, at which time he left. It should be noted that at no time was Stuckey in any non-public area of the store, nor was he at any time in the voting area.

The Board has in many cases refused to set an election aside where, as here, there was no more than the mere presence of a union representative near the polling place.[8] The Employer's counsel cites two [38] cases in support of the objection: *Southwestern Electric Service Company v. N. L. R. B.*, 194 F.2d 939 (C.A. 5), denying enforcement, and *Detroit Creamery Company, et al.*, 60 NLRB 178. The undersigned finds these cases are inapplicable because in the Southwestern case electioneering was found. In the Detroit Creamery case the Board inferred electioneering on the part of a union representative since there was no explanation for his presence in the company's plant. In the instant case Stuckey was in the public area of a store and his presence is fully explained.

The Board has in many cases refused to set aside an election because of a voter being transported to the polls by an agent of the union or the employer.[9]

Based upon the above, it is found that Objections Nos. 1 and 2 do not raise substantial or material issues affecting the results of the election. They are therefore overruled.

Objection No. 3

The Employer furnished some testimony that there were more "non-shoppers" in the store the day of the election

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[8] *Charles T. Brandt, Inc.*, 118 NLRB 956; *Houston Shell and Concrete Division McDonough Co.*, 118 NLRB 1511; *The Rackle Company of Texas* 117 NLRB 462; *Kaiser Services*, 11 NLRB 1093

[9] *Charles T. Brandt, INc.*, 118 NLRB 956; *Garner Auction Service Corporation*, 114 NLRB 293; *"M" System Inc.*, 118 NLRB 502; *Gastonia Combed Yarn Corporation*, 109 NLRB 585

than normally. There is no evidence that these non-shoppers were union employees. The only evidence submitted or found which would in any way identify these people was that furnished by Robert E. Tew, who stated that he saw three men with green ties and one with a green name tag like the name tags worn by National Food employees.[10] There was no other identification furnished of any alleged "non-shoppers" nor was there any evidence found that could in any way identify the "non-shoppers" or associate them in any way with the Petitioner. No evidence submitted or found indicated any of these people talked to any voter nor was there any evidence that they were out of the public portion of the store. Also as discussed in Objections Nos. 1 and 2 above, the mere presence near the polls of a union representative without more does not warrant setting aside an election.

In view of the lack of identification and lack of any evidence of electioneering by any of the alleged "non-shoppers," the undersigned finds that Objection No. 3 does not raise substantial or material issues [39] affecting the results of the election. It is therefore overruled.

Objection No. 4

The investigation revealed that there had been considerable discussion at the pre-election conference as to voting eligibility, especially the eligibility of a sizable number of people who first became employed after the eligibility date of February 8, 1964. Petitioner's observer, Jack Smith, was not present, but Petitioner's observer, Williams, was present at this conference. The standard election notices had been posted which clearly set out the payroll eligibility date to be that ending February 8, 1964. Early in the first voting session, observer Jack Smith, as instructed by the Board agent, was standing at the entrance door into the voting area. Thelma Burroughs came up to cast her ballot and

[10] The witness, however, did not see the word "National" on the tags or on anything else.

Smith recognized her as having started to work for the Employer after the eligibility date of February 8, 1964. Smith told her she could not vote because she came to work after February 8, 1964.[11] She told Smith that Mr. Weaver told her she could vote if she wanted to. Smith then told her to go ahead in and vote. She proceeded to vote a challenged ballot.

Also while Smith was watching the door to the voting area, a second voter, Evelyn B. Langham, came to the door to vote. Observer Smith told Langham she couldn't vote because she came to work after the 8th of February, 1964.[12] She told him she wanted to vote, whereupon he told her she could vote challenge. She then, after the line cleared, went in and cast her challenged ballot.

There was no other evidence relating to this objection.

The observers Smith and Elliott had been put in charge of the doors for the purpose of letting in a few voters at a time. Smith apparently misunderstood his function, though he was no doubt aware of the eligibility date and was aware that these two employees were new with the Employer. The undersigned finds that while this observer did misunderstand his function, he did nevertheless allow the voters to enter and they cast challenged ballots. He did not cause the challenges nor did he voice any threats or promises or electioneer in any way. The Board agent allowed them to vote subject to challenge, explaining to them the reason for the challenge.[13]

[40] The undersigned finds that Objection No. 4 does not raise substantial or material issues affecting the results of the election. It is therefore overruled.

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[11] The investigation revealed she was employed February 22, 1964. The undersigned has sustained the challenge to her ballot in a subsequent section of this decision.

[12] The investigation revealed that Langham was employed February 20, 1964. The undersigned has sustained the challenge to her ballot.

[13] See *Miami Paper Board Mills, Inc.*, 115 NLRB 1431

THE CHALLENGED BALLOTS

The bargaining unit as found by the Acting Regional Director in his Decision and Direction of Election, issued February 13, 1964, is as follows:

> All full-time and regular part-time employees at Employer's Mobile, Alabama, retail operation, including office clerical employees and the grocery, produce, meat, drug, warehouse and service station departments, excluding employees in the snack bar, professional employees, watchmen and/or guards and supervisors as defined in the Act.

Employees eligible to vote in the election were those in the unit who were employed during the payroll period ending February 8, 1964.

Of the 27 voters challenged, 20 were challenged by the Board agent who conducted the election because their names failed to appear on the eligibility list.

Jerry S. Shields

Jerry Shields was employed February 7, 1964, as a bag boy, an eligible classification. He was still employed in this classification the date of the election. I find that Shields was eligible to vote in the election. Accordingly, the challenge to his ballot is overruled.

Robert E. Tew

Robert Tew was referred to as stock clerk, but investigation revealed that his classification was head stock clerk at the time of the election. He was employed February 3, 1964, and was still employed the date of the election. Since he is a new employee, his authority and duties are uncertain.

Tew works throughout the grocery area of the store and in the warehouse. He reports directly to Mr. Weaver, the assistant superintendent. Tew is responsible for reordering merchandise and seeing that the shelves are stocked at all times. He orders the routine items, but cannot on his own order new type items. He can change selling prices on

items of they are marked wrong. He determines the quantity of merchandise to be ordered.

Mr. Weaver reports directly to the owners of the store. Mr. Weaver actually operates like the typical chain store manager. The store [41] has no assistant manager. A man is, however, now being groomed with the thought he may become assistant manager. It also appears that Tew's authority has decreased since the hiring of this man. Some of the employees think of Tew as assistant manager, though Mr. Weaver says Tew is not a supervisor. He can arrange and change arrangements of merchandise for display without consulting anyone in order to sell it. He at times closes the store at night and at times opens the store in the morning. There are two stock clerks who work with him. Tew is paid $100 per week straight salary whereas the other stock clerks and most other employees are paid $1 per hour.

At times most everyone in the store goes to Tew for directions and answers to questions. He does not have to keep track of the hours he works, but does keep a record of the hours the other stock clerks work. He cannot hire or fire. The Petitioner contends Tew is a supervisor; the Employer contends he is not a supervisor. In view of Tew's limited length of service prior to the election and in view of the credibility issue, I make no determination as to whether Tew is a supervisor within the meaning of the Act. Other challenges are sustained, leaving Tew's ballot no longer determinative.

THELMA BURROUGHS, DON G. CARNLEY, HELEN L. CLARKE, RONALD L. CLINGLER, WILBURN ELLIOTT, WILLIE MAE GRIMES, JAMES A. HANNON, CAROLYN J. HARTSELL, GLORIA P. LANE, EVELYN B. LANGHAM, TOMMY B. LEE, CHARLES R. MAYHALL, RENLEY L. PRIEST, LUCILLE K. READY, AND C. H. WEEKLEY

These 15 employees who were challenged by the Board agent were employed after the eligibility date of February 8, 1964. They were employed the dates set out opposite their names, but prior to the date of the election. They were still employed as of the day of the election. Shown is their job classification at the time of the election. All were in eligible classifications.

Thelma Burroughs	February 27, 1964	Cashier
Don G. Carnley	February 14, 1964	Stock boy
Helen L. Clarke	March 5, 1964	Cashier
Ronald L. Clingler	February 26, 1964	Stock boy
Wilburn Elliott	February 26, 1964	Warehouse receiving
Willie Mae Grimes	February 11, 1964	Meat wrapper
James A. Hannon	March 7, 1964	Bag boy
Carolyn J. Hartsell	February 18, 1964	Cosmetics dept.
Gloria P. Lane	February 24, 1964	Asst. office mgr.
[42] Evelyn B. Langham	February 28, 1964	Cashier
Tommy B. Lee	February 21, 1964	Bag boy
Charles R. Mayhall	February 14, 1964	Bag boy
Renley L. Priest	February 26, 1964	Service station
Lucille K. Ready	March 3, 1964	Meat wrapper
C. H. Weekley	February 10, 1964	Meat dept.

As these 15 employees were not employed on the eligibility date, I find that they were not eligible to vote in the election. Accordingly, the challenges to these ballots are sustained.

Sadie B. Burgess and Gladys A. Hilburn

The 18th and 19th voters challenged by the Board agent were Sadie B. Burgess, a drug department employee, and

Gladys A. Hilburn, an office clerical employee. Both were in eligible classifications.

Burgess was employed November 9, 1963, and, according to the Employer, she was hired for the Christmas season. She was discharged right after inventory was taken February 4, 1964, 4 days before the eligibility date. She has not been reemployed.

Hilburn was employed January 13, 1964, and, according to the Employer, she was hired to fill in for a Mrs. Ezell who was sick. Upon the return of Ezell, Mrs Hilburn was discharged February 25, 1964, after the eligibility date, but before the election. She has not been reemployed.

The Petitioner does not necessarily agree that these employees were discharged for the reasons alleged by the Employer. However, there have been no charges filed alleging that their discharges were a violation of the Act. As neither of these employees was employed on the date of the election, I find that they were not eligible to vote in the election. Accordingly, the challenges to the ballots of these two voters is sustained.

Fred L. Stokes

The 20th voter challenged by the Board agent was Fred L. Stokes, a part-time meatcutter. This was an eligible classification.

The Employer's records disclose that Stokes began work for the Employer on or about June 30, 1962, as a part-time butcher. From June 30, 1962, until January 12, 1964, Stokes worked several hours nearly every weekend. However, due to employment of a new meat market manager and a new full-time meatcutter, along with a decline in business, the Employer [43] has not needed Stokes since January 10, 1964. There is no indication that Stokes' services will be needed in the future. Stokes is employed full time 5 days per week at the Brookley Field Commissary. There is no expectancy that Stokes will work further for the Employer. As Stokes was not employed at the time of

the election or on the eligibility date, I find that he was not eligible to vote in the election. Accordingly, the challenge to his ballot is sustained.

Forrest A. Dalton

There was one voter challenged by the petitioning Union. That challenge was to the ballot of Forrest A. Dalton, a drug department employee. The Petitioner contends that Dalton was a professional employee within the meaning of the Act. Dalton began work for the Employer in November, 1963 and has worked continuously for the Employer ever since. His position is that of front end drug clerk. He checks merchandise, assists customers, watches for shoplifters, fixes displays, and sells merchandise. He has no supervisory authority. He is not a registered pharmacist nor has he received any academic training in pharmacy. He does not fill prescriptions and seldom goes into the pharmacy department. He does the same type work as Anna Wilson, an eligible employee who is a drug clerk. As Dalton is not a professional employee but rather a drug clerk whose position is within the unit, I find he was eligible to vote in the election. Accordingly, the challenge to Dalton's ballot is overruled.

Floyd D. Devitt, Burl Dock, Alma E. Garrison, Carlos Harris, Donald J. Johnson, and Mildred E. Turner

The remaining six challenged voters were challenged by the Employer, who alleged in each case that the voter was "not now an employee." Following are listed the six voters along with the last date each worked for the Employer. Also listed are their job classifications. Each of the employees was employed in an eligible classification.

Floyd D. Devitt	February 12, 1964	Stock boy
Burl Dock	February 15, 1965	Truckdriver
Alma E. Garrison	February 16, 1964	Cosmetic dept.
Carlos Harris	February 12, 1964	Stock clerk
Donald J. Johnson	March 2, 1964	Stock clerk
Mildred E. Turner	February 10, 1964	Checker

Each employee was discharged on a date prior to the election. None of these voters has been reemployed.

The Petitioner does not necessarily agree that these voters were [44] discharged for the reasons alleged by the Employer. However, there have been no charges filed alleging that the discharged were a violation of the Act. As none of these voters were employed on the day of the election, I find they were not eligible to vote in the election. Accordingly, the challenges to the ballots of these six voters are sustained.

DETERMINATION

The undersigned finds that Objections Nos. 1 through 4 do not raise substantial or material issues affecting the results of the election, accordingly, the Employer's objections are overruled in their entirety.

The undersigned makes no determination as to the challenged ballot of *Robert E. Tew*.

The undersigned finds that *Forrest A. Dalton* and *Jerry S. Shields* were eligible to vote in the election. The challenges to their ballots are therefore overruled. However, as these ballots are insufficient in number to affect the results of the election, they will not be counted.

The undersigned finds that *Sadie B. Burgess, Thelma Burroughs, Don G. Carnley, Helen L. Clarke, Ronald L. Clingler, Floyd D. Devitt, Burl Dock, Wilburn Elliott, Alma E. Garrison, Willie Mae Grimes, James A. Hannon, Carlos Harris, Carolyn J. Hartsell, Gladys A. Hilburn, Donald J. Johnson, Gloria P. Lane, Evelyn B. Langham, Tommy B. Lee, Charles R. Mayhall, Renley L. Priest, Lucille K. Ready, Fred L. Stokes, Mildred E. Turner and C. H. Weekley* were not eligible to vote in the election. The challenge as to each of their ballots is therefore sustained.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that the Retail Clerks International Association, AFL-CIO, Local Union No. 458, has been des-

ignated and selected by a majority of all full-time and regular part-time employees at Employer's Mobile, Alabama, retail operation, including office clerical employees and the grocery, produce, meat, drug, warehouse and service station departments, excluding employees in the snack bar, professional employees, watchmen and/or guards and supervisors as defined in the Act, as their representative for the purposes of collective bargaining, and that pursuant to Section 9 (a) of the Act, the aforesaid organization is the exclusive representative of all such employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment. [45]

Dated, April 16, 1964, at New Orleans, Louisiana.

John F. LeBus, Regional Director
Fifteenth Region
National Labor Relations Board

RESPONDENT EXHIBIT NO. 6

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIFTEENTH REGION

WEINACKER BROTHERS, INC.
Employer
and
RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL-CIO, LOCAL UNION No. 458
Petitioner

Case. No. 15-RC-2850

REQUEST FOR REVIEW
(of Regional Director's Supplemental Decision and Certification of Representative dated April 16, 1964)

[Received NLRB 15th REG. New Orleans, L.A., April 27, 8:43 AM, '64]

Johnston, Johnston and Courtney, Solicitors for Weinacker Brothers, Inc., By Bert S. Nettles

Appendix F

REQUEST FOR REVIEW

Ground I

A Substantial Question of Law and Policy Is Raised Because of the Departure From Officially Reported Board and Court Precedent.

(Authorities: *Detroit Creamry Co.*, 1945, 60 NLRB 178 16 Labor Relations Manuel 221; *Southwestern Electric Service Co. v. NLRB* (5th CCA, 1952) 194 F.2d 939).

Ground II

The Regional Director's Decisions on Substantial [46] Factual Issues Are Clearly Erroneous on the Record and Such Error Prejudicially Affects the Rights of Weinacker Brothers, Inc., a Party.

(Factual issues:

1. "he (Stuckey) did not electioneer", p. 4 of Supp. Decision;

2. "There was no evidence submitted and none was found during the investigation to establish that Stuckey electioneered. . ." p. 4 of Supp. Decision;

3. "It should be noted that at no time was Stuckey in any non-public area of the store. . .) p. 5 of Supp. Decision;

4. "nor was he (Stuckey) at any time in the voting area." p. 5, Supp. Decision.)

Summation Of Evidence And Rulings Bearing On The Issues

Summation is best had by quoting the following pertinent portion of pages, 2, 3, and 4 of the Regional Director's Supplemental Decision:

"The election herein was conducted in two sessions on the same day: the first session was from 1:30 p.m. to 2:30 p.m. and the second session was from 4:30 p.m. to 5 p.m. Both sessions were conducted in the same location, which was in the warehouse area of the Employer's store. Entrance to the warehouse area from the

public area can be made through one of three doors. Most voters, however, entered the warehouse through double swinging doors located in the northwest section of the public area of the store. Each of these doors has a glass window approximately 1 foot square located about 5 feet from the floor. The warehouse is poorly lighted. The voting table and booth were set up inside the warehouse some 15 feet from the double swinging doors, but at an angle from the doors, i.e., one looking straight through the glass would not see the voting table or booth. To be able to see into the voting area if the doors were closed, one would have to be in a precise line of sight as well as at a certain height. The testimony is that the doors were closed at least as much as they were open.

"Mr. James Stuckey, referred to in Objections Nos. 1 and 2, has for the last 2 years been president of Petitioner. Mr. Stuckey is also employed full time as a butcher for National Food Company at its Big 'D' Store in Mobile, Alabama. [47] Fred L. Stokes, referred to in Objection No. 2 is a former part-time meatcutter for the Employer.[1]

"On election day, between 4:15 p.m. and 4:25 p.m., some 5 to 15 minutes before the polls opened for the second voting session, Mr. Stuckey arrived at the Employer's store, having transported Mr. Stokes. These two men then walked toward the rear of the store. They stopped momentarily to look at the fresh meat display.[2] At this time Mr. Cecil Robertson, a Weinacker butcher on duty, and Mr. Colon Taylor, the Employer's market manager, walked up. Robertson and Stuckey had worked together at another store and Mr. Robertson introduced

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[1] Stokes cast a challenged ballot in the election and the undersgined has sustained the challenge. See challenge section of this decision.

[2] Interested because both are butchers.

Taylor to Stuckey. After an exchange of pleasantries, Stokes walked away alone and through the swinging doors into the voting area.[3] Stokes was advised the polls were not yet open, so he returned to the public area of the store. Sometime thereafter Stokes and Stuckey walked again toward the voting area, but Stuckey stopped at the frozen food case, some 7 to 10 feet short of the swinging doors leading to the voting area, and Stokes again entered the voting area alone. Due to the number of challenged ballots being cast, Stokes was in the voting room some 15 minutes, after which time he came out. By this time Mr. Stuckey had moved to the front of the store. Stuckey and Stokes then left the store and Stuckey did not return to the store until the polls had closed.

"While Stokes was in the voting room, Stuckey remained for a time near the frozen food case and then for a period near the ice cream case, which is some 12 to 15 feet from the doors into the voting area. While Stuckey was standing there, a Mr. Turner and his wife came up. Turner's wife proceeded ahead into the voting room.[4] Mr. Turner and [48] Mr. Stuckey talked for awhile near the ice cream case. Mr. Tew[5] was then sent by assistant supervisor Weaver to have Turner and Stuckey move away from the area because Mr. Weaver considered they were too close to the voting room entrance. After a short discussion with Mr. Tew,[6] Turner and Stuckey went to the drugstore section of the store and had coffee. Staying

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[3]Neither the Union nor the election was mentioned in this short discussion.

[4]Mildred Turner cast a challenged ballot and the undersigned has sustained the challenge. See challenge section of this decision. Her husband has no connection with Weinacker's. He is employed by the U.S. Government and is not a member of any union or in any manner an agent of the Petitioner.

[5]Also a challenged voter.

[6]No electioneering occurred.

possibly 5 to 10 minutes, the two men then returned to the area near the food case, about 12 feet from the entrance to the voting room. Soon thereafter Mr. Weaver again sent Mr. Tew back to have them move away. Mr. Tew on this occasion had the Employer's observer, Elliott, and Petitioner's observer, Smith, with him. After a short discussion wherein Tew told Stuckey he didn't have to leave, but only move away from the area near the voting room, Stuckey and Turner went to the front of the store.

"Stuckey was known by possibly half of the eligible voters, who might have met him at union meetings. Approximately one-half of the eligible voters had voted in the first session, leaving approximately one-half to vote in the second session."

Argument As To Evidence And Rulings Bearing On The Issue

The aforesaid factual issues 1 and 2 are, respectively, that "he (Stuckey) did not electioneer", p. 4, and "There was no evidence submitted and none was found during the investigation to establish that Stuckey electioneered. . .": p. 4. But what does the Regional Director's Supplemental Decision itself reflect as above set out?

First, Stuckey, the non-employee president of petitioning union who was known by "possibly half of the eligible voters, who might have met him at union meetings", transported and accompanied a voter to the vicinity of the voting place "some 5 to 15 minutes before the polls opened for the second voting session." *Second*, [49] Stuckey walked through the length of the Employer's store whereby he could be observed by nearly if not all of the voters (including the "approximately one-half of the eligible voters" who shortly thereafter cast their ballots"); and it should be remembered that "Stuckey was known by possibly half of the eligible voters, who might have met him at union meetings" and that those who knew Stuckey might very well have advised their fellow employees of his identity and

position. *Third*, we know that Stuckey was "introduced" to an eligible voter, and that an "exchange of pleasantries" then occurred between the non-employee president of petitioning union and a newly met eligible voter, apparently in full view of many other eligible voters. To digress for a moment, we submit that one of the most effective means of electioneering is just such an "exchange of pleasantries", particularly when by the candidate himself during or immediately prior to the election and when in the vicinity of the polling place; and that it makes no difference whether he later says no mention was made of the union or the election.

Fourth, Stuckey stationed himself at a point in the immediate vicinity of the polling place where employees would have to pass him on their way to cast a ballot, unless they took a less direct and more circuitous route; and we are informed that "most voters' went through the swinging doors near which Stuckey had stationed himself (page 2 of the Supp. Decision). The first full paragraph on page 4 of the Supplemental Decision dwells at length on matters occurring while Stuckey was outside the doors in the immediate vicinity of the polling place, such paragraph being set out in full above, including the fact that Stuckey left the area once on request but then returned to a point even closer to the polling place. Thereafter we are informed by the Supplemental Decision (page 4 thereof) that "After a short discussion wherein Tew (as directed by the Assistant Supervisor of the Employer) told Stuckey he didn't have to leave, but only move away from the area near the voting room, Stuckey and Turner went to the front of the store."

Omitted from the Supplemental Decision are the facts as reported during the administrative investigation relating to Stuckey's general belligerent manner upon being requested to move [50] (asking Tew whether he was "asking me to leave or telling me to leave the door" as written by Tew in his statement of March 9, 1964, and "are you telling me to leave or asking me" as reported by Employer's observer

Elliott in his affidavit of March 9, copies of both the statement and affidavit being furnished representatives of the NLRB during the administrative investigation) and also the fact that Stuckey's identity as president of the petitioning union was then unknown to either Mr. Weaver, the assistant supervisor, or Mr. Tew, or Mr. Elliott, the Employer's observer.

Fifth, although the Supplemental Decision only casually mentions that upon finally leaving, "Stuckey did not return to the store until the polls had closed", information furnished the NLRB investigative team related that after the polls were closed Stuckey came back into the store and walked through the store to the voting place (where preparations were being made for the counting of the ballots) and there engaged in conversation with other representatives of the petitioning union, at which time Stuckey's identity and position within petitioning union first became known to representatives of the employer.*

We respectfully submit that from the conduct of Stuckey as above set out, there is no question but that his intent and his actions were those of electioneering and in direct violation of the rules promulgated by the Board and plainly stated in the Notice of Election, all of which prejudicially affected the rights of the Employer. We further submit that the Regional Director's decisions on substantial factual issues as mentioned above are clearly erroneous on the record and that such error prejudicially affects the rights of the Employer.

*The above argument is likewise applicable to factual issues 3 and 4 previously raised herein by the Employer, and relates to the point that Stuckey's purpose earlier at the store of the Employer was definitely that of electioneering.

Argument As To Ground I. That "A Substantial Question Of Law And Policy Is Raised Because Of The Departure From Officially Reported Board and Court Precedent."

We respectfully invite the Board's attention to the decisions of *Southwestern Electric Service Co. v. NLRB*, 5th CCA 1952, 21 Labor Cases 66, 820, 194 F.2d 939; and *Detroit Creamry Co.*, 1945 60 NLRB 178, 16 Labor Relations Manual 221.

The objectionable conduct by the union official not an employee in the *Southwestern* case, supra, was that he was in the polling area "at least 10 or 15 minutes before the polls were open, [51] and remained in the polling area for a comparatively long time after the voting began, *giving directions to the union officers and to the voters*". Likewise, in the instant fact situation a union official not an employee (Mr. Stuckey) appeared at the vicinity of the polling place shortly before the polls were opened at 4:30 p.m. on March 9, and he remained in such area for a comparatively long time after the voting began.

The "directions" given in the *Southwestern* case, supra, were simple admonitions to two employees to "go ahead and vote" and to "go over and vote". Whereas, here Mr. Stuckey transported and accompanied a voter by the name of Fred L. Stokes to the vicinity of the polling place, with the obvious inference from Mr. Stuckey's actions alone being tantamount to telling Mr. Stokes to "go ahead and vote". Also, Mr. Stuckey placed himself immediately outside the door leading into the polling area. Furthermore, he engaged in conversation with several voters who presumably had seen him at meetings sponsored by the petitioning union. Irregardless of statements taken subsequent to the filing of objections as to the nature of said conversations, it is manifest that the very presence of Mr. Stuckey in the vicinity of the polling area, his having transported and accompanied Mr. Stokes to such area, and his conversation with other employees was electioneering "at or near the polling place". That Mr. Stuckey's purpose was elec-

tioneering is further shown by his *remaining in the area until after the polls were closed and then walking back* to the voting booth (where preparations were being made for the counting of the ballots) and engaging in conversation with other representatives of the petitioning union, at which time Mr. Stuckey's identity first became known to the representatives of the employer.

This *Southwestern* decision, supra, has since been cited by two 1954 Fifth Circuit decisions as authority and precedent in denying enforcement of NLRB orders directing employers to cease and desist from refusing to bargain collectively with unions having won representation elections wherein objections had been filed. See *NLRB v. Trinity Steel Co.*, 5th CCA 1954, 214 F.2d 120; and *NLRB v. West Texas Utilities Co.*, [52] 5th CCA 1954, 214 F.2d 732.

Furthermore, in a fact situation almost on the proverbial "all fours" with the instant case, the NLRB ruled that conduct of union's vice president in visiting employer's plant during conduct of election and in talking to some of its empolyees at such time constituted violation of a material election rule and interfered with employees' freedom of choice of a bargaining representative. *Detroit Creamry Co.*, supra. There the Board explained as follows:

"The election directed by the Board was scheduled during the hours from 3 p.m. to 6 p.m. At 2 p.m. on the day of the election, one William H. Gibson, vice president of the CIO was in the company's plant among the production employees on the first floor. At 3:30 p.m. on the same day, he was among the production employees on the second floor, where he talked to some of them, although the nature and substance of the conversations are unknown. Although there is no evidence to indicate that Gibson at any time, was in the room where the balloting was conducted or at any place where he could be visible to an employee from inside the balloting room, he was, nevertheless, stationed at a point on the second floor where employees leaving the production

room on the second floor to cast their ballots would have to pass him on the way to the stairs leading to the first floor and the balloting room. Shortly after 3:30 p.m. at the request of the Board's agent as a result of complaints by the AF of L, Gibson left the company's plant. Gibson was not an employee of the Company and had no business with the Company warranting his presence in the plant on the day of the election.

"One of the rules promulgated by the Board and plainly stated in the Notice of Election, copies of which were posted in conspicuous places in and about the polls prior to the election, provides that "Voters will be [53] allowed to vote without interference, restraint, or coercion. Electioneering will not be permitted at or near the polling place."

It is observed that the Board in its *Detroit Creamry Co.*, decision, supra, placed on emphasis on the nature and substance of the conversations (the same being "unknown"), but indicated that the mere fact that the conversations took place was inference enough of electioneering.

We respectfully submit that here it matters not whether the business of the employer is a "plant," a retail store, or otherwise. The crucial point for consideration is the conduct and actions of the union official at the election itself and in the area of the polling place. We submit that *any* of the following actions of Mr. Stuckey, standing alone and removed from the others, would in itself be sufficient grounds for setting aside the election: (1) transporting and accompanying a voter to the vicinity of the polling place, (2) stationing himself at a point in the immediate vicinity of the polling place where employees would have to pass him on their way to cast a ballot, and (3) conversing with employees immediately before and *during* the actual conduct of the election. In considering the totality of Mr. Stuckey's conduct, including *all* of the aforementioned actions and also Mr. Stuckey's remaining in the area until after the polls were closed and then walking back to

the voting booth (where preparations were being made for the counting of the ballots) and engaging in conversation with other representatives of the petitioner, there is no question but that his purposes and his deeds were those of electioneering and in direct violation of the rules promulgated by the Board and plainly stated in the Notice of election.

As cogently expressed in the *Southwestern* decision, supra "If the tables were turned, and a representative of the Company had done exactly what was done here, with a result favorable to the Employer, the election should be set aside; and the same rule must apply in this case". Had Mr. R. M. Weinacker, Jr., accompanied an employee to the vicinity of the polling place, stationed himself at a point in the immediate vicinity of the polling place where employees would have to pass him on their way to cast a [54] ballot, and conversed with employees in the vicinity of the polling area during the time of the election and for no business purpose; and had the petitioning union lost the election, there would be no question but that such election would be set aside on objection of the union. We submit that the same rule should apply in respect to the activities of the non-employee president of the petitioning union.

We therefore respectfully submit that the Regional Director's Supplemental Decision and Certification of Representatives, dated April 16, 1964, should be set aside, and that this Board should likewise set aside subjection election of March 9, 1964.

Johnston, Johnston, & Courtney

Johnston, Johnston, & Courtney
Solicitors for Weinacker Brothers, Inc.
By: /s/ Bert S. Nettles

[Proof of service omitted]

RESPONDENTS EXHIBIT No. 7

[Received New Orleans, La., 1964, May 22, P.M. 3:01]

PUBLIC BUILDINGS SERVICE COMMUNICATIONS

[55] XDXXXBQ-075 M, AXXXBQ-076, WBC020, MXA102, MX WWAL 19 BB, MX 5 BNO

BNO John F. Lebus Dir NLRB New Orleans La –
BNO Weinacker Bros Inc, 1550 Government St, Mobile Ala.
BNO Bert S. Nettles & Samuel M Johnston Esqs Johnston, Johnston & Courtney P O Box 550, Mobile Ala
BNO Retail Clerks Intl Asso AFL-CIO Loc Un 458 Att Clifford E. Taggart No. 1 S Lawrence St Mobile Ala
BNO Otto E Simon Esq Suit 1010 Van Antwerp Bldg Mobile Ala
WWAL 19 NLRB
Washington DC 5-22-64 1502R

Re: Weinacker Brothers, Inc. 15-RC-2850. It is hereby ordered that the employers request for review of the Regional Directors Supplemental Decision and Certification of Representative be, and it hereby is, denied as it raises no substantial issues warranting review. By direction of the Board:

Howard W. Kleeb Assoc Exec Secy
15-RC-2850
GEP 1510R

CONFIRMATION COPY

This is a confirmation copy of a message telephoned to MR on 5-22 at 307 M, General Services Administration, Transportation & Communications Service, Ext. 6644 or 527-6644. Message telephoned by Operator 3.

RESPONDENTS EXHIBIT NO. 8

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIFTEENTH REGION

WEINACKER BROTHERS, INC.		
and		
LORENZO MATTHEWS, an Individual,	Case No.	15-CA-2486-1
HARRY W. WRIGHT, an Individual,	Case No.	15-CA-2486-2
LOCAL 458, RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL-CIO,	Cases Nos.	15-CA-2486-3 15-CA-2486-4 15-CA-2486-5 15-CA-2486-6 15-CA-2486-8 15-CA-2486-12
ELIZ. BETH ANN BOYETTE, an individual	Case No.	15-CA-2486-15
DONALD HARRIS, an individual	Case No.	15-CA-2486-17
JACK WILLIS SMITH, an individual,	Case No.	15-CA-2486-18
and		
LOCAL 458, RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL-CIO	Case No.	15-CA-2501

ORDER CONSOLIDATING CASES, COMPLAINT, AND NOTICE OF HEARING

It having been charged by Lorenzo Matthews, an Individual, in Case No. 15-CA-2486-1; Harry W. Wright, an Individual, in Case No. 15-CA-2486-2; Local 458, Retail Clerks International Association, AFL-CIO (herein called the Union), in Cases Nos. 15-CA-2486-3, 4, 5, 6, 8, 12; Elizabeth Ann Boyette, an Individual, in Case No. 15-CA-2486-15; Donald Harris, an Individual, in Case No. 15-CA-2486-17;

Jack Willis Smith, an Individual, in Case No. 15-CA-2486-18; and by the Union in Case No. 15-CA-2501, that Weinacker Brothers, Inc. (herein called Respondent), has engaged in and is engaging in unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151 *et seq.* (herein called the Act), the General Counsel of the National Labor Relations Board (herein called the Board), by the undersigned Regional Director for the Fifteenth Region, having duly considered the matter and deeming it necessary in order to effectuate the purposes of the Act, and to avoid unnecessary costs or delay,

HEREBY ORDERS, pursuant to Section 102.33 of the Board's Rules and Regulations, Series 8, that these cases be, and they hereby are, consolidated.

Said cases having been consolidated for hearing, the General Counsel of the Board, on behalf of the Board, by the undersigned Regional Director, pursuant to Section 10(b) of the Act and the Board's Rules and Regulations, Series 8, Section 102.15, hereby issues this Consolidated Complaint and Notice of Hearing and alleges as follows:

1.

The charge in Case No. 15-CA-2486-1 was filed by Lorenzo Matthews on May 11, 1964, and served on Respondent on or about May 13, 1964. The charge in Case No. 15-CA-2486-2 was filed by Harry W. Wright on May 11, [57] 1964, and served on Respondent on or about May 13, 1964. The charges in Cases Nos. 15-CA-2486-3, 15-CA-2486-4, 15-CA-2486-5, 15-CA-2486-6, 15-CA-2486-8, and 15-CA-2486-12 were filed by the Union on May 11, 1964, and served on Respondent on or about May 13, 1964. The charge in Case No. 15-CA-2486-15 was filed by Elizabeth Ann Boyette on May 12, 1964, and served on Respondent on or about May 13, 1964. The charge in Case No. 15-CA-2486-17 was filed by Donald Harris on May 26, 1964, and served on Respondent on or about June 18, 1964. The charge in Case No. 15-CA-2486-18 was filed by Jack Willis

Smith on May 27, 1964, and served on Respondent on or about June 18, 1964. The charge in Case No. 15-CA-2501 was filed by the Union on June 4, 1964, and served on Respondent on or about June 10, 1964; an amended charge in Case No. 15-CA-2501 was filed by the Union on July 29, 1964, and served on Respondent on or about July 30, 1964.

2.

Respondent is now, and has been at all times material herein, an Alabama corporation with its principal office and place of business in Mobile, Alabama. Respondent is engaged in the business of retail supermarket operations, with subsidiary gasoline and oil services.

3.

During the past 12-month period, which period is representative of all times material herein, Respondent, in the course and conduct of its business operations as described in paragraph 2, above, sold and distributed products, the gross value of which exceeded $500,000. During the same period, Respondent received goods and materials valued in excess of $50,000, which goods and materials were shipped directly to it in the State of Alabama from points outside the State of Alabama.

4.

Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

5.

The Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

6.

The following-named individuals are now, and at all times material herein have been, supervisors of Respondent within the meaning of Section 2(11) of the Act: [58]

Mrs. Jean Brooks	Colen Taylor
Mrs. Myrtis Chaillot	Bob Tew
Cecil Laws	Claude Tingle
Mrs. Mary Richardson	Horace Weaver
Robert M. Weinacker, Jr.	

7.

Respondent, by its supervisor and agent, Mrs. Jean Brooks, at its Mobile, Alabama, store, on or about the dates indicated, engaged in the following acts and conduct:

(a) During the month of January 1964, interrogated employees about their union activities, desires, and feelings;

(b) During the month of January 1964, stated that Respondent would close the store, before it would allow Respondent's employees to be represented by a union;

(c) During the month of January 1964, told employees that anyone who has anything to do with the Union would be fired.

8.

Respondent, by its supervisor and agent Mrs. Myrtis Chaillot, at its Mobile, Alabama, store, on or about the dates indicated, engaged in the following acts and conduct:

(a) During early March 1964, kept under surveillance the meeting place, meetings and activities of the Union;

(b) During the months of December 1963 and January, February, and March, 1964, interrogated employees concerning their union membership, activities, and desires;

(c) On or about January 22, 1964, and March 9, 1964, threatened employees with loss of their jobs if they voted for the Union;

(d) During the latter part of the month of December 1963 or early January 1964, threatened that it would close the store rather than have a union;

(e) On or about February 10, 1964, created an impression of surveillance of union activities by informing an employee that Respondent would spy upon the next union meeting.

9.

Respondent, by its supervisor and agent Cecil Laws, at its Mobile, Alabama, store, during the month of January 1964, told an employee that Respondent would not hire any new employees unless they were against [59] the Union.

10.

Respondent, by its supervisor and agent Mrs. Mary Richardson, at its Mobile, Alabama, store, on or about the dates indicated, engaged in the following acts and conduct:

(a) During early March, 1964, kept under surveillance the meeting place, meetings and activities of the Union;

(b) During the months of February and March 1964, interrogated employees concerning their union membership, activities, and desires;

(c) During the months of January and March 1964, and on or about April 9, 1964, threatened employees with discharge because of their union activities;

(d) During the early part of February 1964, told employee that Respondent would fire anyone who signed a union card.

11.

Respondent, by its supervisor and agent Bob Tew, at its Mobile, Alabama, store, on or about the dates indicated, engaged in the following acts and conduct:

(a) During the months of January, February, and March, 1964, threatened that Respondent would close, before it would allow its employees to be represented by a union;

(b) During the months of January, February, and March, 1964, interrogated employees concerning their union membership, activities, and desires;

(c) During the months of February and early March 1964, threatened that Respondent would discharge employees because of their activities on behalf of the Union.

12.

Respondent, by its supervisor and agent Colen Taylor, at its Mobile, Alabama, store, on or about March 25, 1964, interrogated an employee concerning his union membership, activities and desires.

13.

Respondent, by its supervisor and agent Claude Tingle, at its Mobile, Alabama, store, on or about the dates indicated, engaged in the following acts and conduct:

[60] (a) On or about April 20, 1964, threatened that Respondent would close the service station, before it would allow the service station employees to be represented by the Union;

(b) On or about April 20, 1964, threatened that Respondent would discharge employees suspected of voting for the Union.

14.

Respondent, by its supervisor and agent Horace Weaver, at its Mobile, Alabama, store, on or about the dates indicated, engaged in the following acts and conduct:

(a) During the months of December 1963 and January, February, and March, 1964, interrogated employees concerning their union membership, activities, and desires;

(b) Early in the month of March 1964, kept under surveillance the meeting places, meetings, and activities of the Union;

(c) During the month of January 1964, solicited employees to withdraw their union cards;

(d) During the month of January 1964, and or about March 6, 1964, threatened to discharge employees for union activities;

(e) On or about February 4, 1964, promised an employee benefits for information concerning union leaders;

(f) On or about March 6, 1964, promised an employee benefits after the union matter was straightened out;

(g) On or about March 6, 1964, threatened to close the store, before it would allow its employees to be represented by a union;

(h) During the month of February 1964, prohibited the wearing of union buttons by employees;

(i) During the month of January 1964, promulgated and enforced a rule against union solicitation within the store.

15.

Respondent, by its President and agent, Robert M. Weinacker, Jr., at its Mobile, Alabama, store, on or about the dates indicated, engaged in the following acts and conduct:

[61] (A) On or about January 16, 1964, interrogated employees concerning their union membership, activities, and desires;

(b) Around late February or early March 1964, in a speech to employees, threatened that Respondent would close if the Union was selected as the employees' bargaining representative.

16.

On or about the dates set forth opposite their respective names, Respondent discharged the following-named employees and thereafter failed and refused, and continues to fail and refuse, to reinstate them:

Elizabeth Ann Boyette	May 1, 1964
Sadie B. Burgess	February 4, 1964
Burl Dock	February 15, 1964
Cleveland Dortch	April 24, 1964
Marguerite Etheredge	January 13, 1964
Lorenzo Matthews	May 2, 1964
Mildred E. Turner	February 10, 1964
W. J. Williams	April 18, 1964
Harry W. Wright	February 28, 1964

17.

On or about the dates set forth opposite their respective names, and thereafter, provided the following-named employees with less employment than they normally would have received:

Sadie Burgess	January 20, 1964
Donald Harris	March 20, 1964
Jack Smith	April 20, 1964
Elizabeth Ann Boyette	March 16, 1964

18.

Around the end of February and beginning of March 1964, Respondent denied W. J. Williams and Lorenzo Matthews the use of dining and rest room facilities.

19.

Respondent engaged in the acts and conduct with respect to those employees named in paragraphs 16 through 18, above, as described in paragraphs 16 through 18, above, because of their membership in and activities on behalf of the Union, and to discourage union and other concerted activities of its employees.

[62] All full-time and regular part-time employees at Respondent's Mobile, Alabama, retail operation, including office clerical employees and the grocery, produce, meat, drug, warehouse and service station departments, excluding employees in the snack bar, professional employees, watchmen and/or guards and supervisors as defined in the Act, as amended, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

21.

On or about March 9, 1964, in Case No. 15-RC-2850, a majority of Respondent's employees in the appropriate unit described in paragraph 20, above, by a secret ballot election conducted under the supervision of the Regional Director of the Board's Fifteenth Region, designated and

selected the Union as their representative for the purpose of collective bargaining with the Respondent, and on or about April 16, 1964, the Regional Director of the Board's Fifteenth Region certified the Union as the exclusive collective-bargaining representative of the employees in said unit.

22.

At all times since on or about March 9, 1964, the Union has been, and now is, representative for the purpose of collective bargaining of a majority of the employees in the unit described in paragraph 20, above, and, by virtue of Section 9(a) of the Act, has been, and now is, the exclusive representative of all the employees in said unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment and other terms and conditions of employment.

23.

Commencing on or about April 20, 1964, and at various times thereafter to date, the Union requested, and has continued to request, Respondent to bargain collectively with it as the exclusive bargaining representative of all employees of Respondent in the unit described in paragraph 20, above, with respect to rates to pay, wages, hours of employment and other terms and conditions of employment.

24.

Commencing on or about April 20, 1964, and at various times thereafter, Respondent refused, and continues to refuse, to bargain [63] collectively with the Union as the exclusive bargaining representative of all employees in the unit described above in paragraph 20, in that Respondent failed and refused to meet at reasonable times and confer in good faith with the Union with respect to wages, hours and other terms and conditions of employment, in spite of the Union's repeated requests that it do so.

25.

Commencing on or about April 20, 1964, and at all times thereafter, Respondent did further refuse, and continues to refuse, to bargain collectively with the Union as the exclusive bargaining representative of all the employees in the unit described above in paragraph 20, in that Respondent failed and refused to furnish information requested by the Union, concerning the existing wages, job classifications, and related information concerning employees in the bargaining unit, which was necessary, relevant, and material to the Union's intelligent bargaining on such matters.

26.

By the acts described in paragraphs 7 through 15, above, and by each of said acts, Respondent has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a) (1) and Section 2(6) and (7) of the Act.

27.

By the acts described in paragraphs 16 through 19, agove, and by each of said acts, Respondent has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a) (1) and (3) and Section 2(6) and (7) of the Act.

28.

By the acts described in paragraphs 24 and 25, above, and by each of said acts, Respondent has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a) (1) and (5) and Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 12th day of October 1964 at 10 o'clock in the forenoon (CST), at Room 301, Grand Jury Room, United States Courthouse and Customhouse, Mobile, Alabama, [64] a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the

above complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and 4 copies of an answer to said complaint within 10 days from the service thereof and that unless it does so all of the allegations in the complaint shall be deemed to be admitted to be true and may be so found by the Board.

Dated at New Orleans, Louisiana, this 31st day of August 1964.

John F. LeBus, Regional Director
National Labor Relations Board
Fifteenth Region
T6024 Federal Building (Loyola)
701 S Loyola Avenue
New Orleans, Louisiana 70113

RESPONDENTS EXHIBIT No. 8A

[Weinacker Brothers Inc. and Lorenzo Matthews et al., Consolidated Cases Nos. 15-CA-2486-1 et al. before the NLRB]

AMENDMENTS TO COMPLAINT

Pursuant to Section 102.17 of the Rules and Regulations of the National Labor Relations Board, Series 8, as amended, the Complaint heretofore [65] issued and incorporated in the Order Consolidating Cases, Complaint and Notice of Hearing dated August 31, 1964, in the above entitled proceeding is hereby amended by amending the wording of paragraphs 17 and 28 (amendments in said paragraphs underlined), and by adding paragraph 25 (a) as follows:

17.

On or about the dates set forth opposite their respective names, and thereafter, Respondent provided the following-

named employees with less employment than they normally would have received:

Sadie Burgess	January 20, 1964
Donald Harris	March 20, 1964
Jack Smith	April 20 *and May 4*, 1964
Elizabeth Ann Boyette	March 16, 1964

25(a).

On or about April 20, 1964, and May 4, 1964, and at various times thereafter, Respondent refused, and continues to refuse, to bargain collectively with the Union as the exclusive bargaining representative of all employees in the unit described above in paragraph 20, in that Respondent unilaterally changed existing wage rates, hours of employment, and other terms and conditions of employment of employees in the unit described above in paragraph 20.

28.

By the acts described in paragraphs 24, 25 and 25(a), above, and by each of said acts, Respondent has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a) (1) and (5) and Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE THAT, pursuant to Section 102.20 and 102.21 of the Board's Rules and Regulations, Series 8, as amended, the Respondent shall file with the Regional Director of the Fifteenth Region, acting in this matter as agent of the National Labor Relations Board, an original and four copies of an answer to paragraphs 17, 25(a) and 28 of the Amendments to the Complaint within ten days from the service hereof, and that unless it does so, all paragraphs with respect to said amendments to Complaint shall be deemed to be admitted to be true and may be so found by the Board.

Dated at New Orleans, Louisiana, this 16th day of September, 1964.

Fred A. Lewis
Acting Regional Director
[66] National Labor Relations Board
Fifteenth Region
T6024 Federal Building (Loyola)
701 Loyola Avenue
New Orleans, Louisiana 70113

RESPONDENTS EXHIBIT NO. 8B

(Weinacker Brothers Inc. and Lorenzo Matthews et al, Consolidated Cases Nos. 15-CA-2486-1 et al. before the NLRB)

AMENDMENTS TO COMPLAINT

Pursuant to Section 102.17 of the Rules and Regulations of the National Labor Relations Board, Series 8, as amended, the Complaint heretofore issued and incorporated in the Order Consolidating Cases, Complaint and Notice of Hearing dated August 31, 1964, in the above-entitled proceeding, and amended under date of September 16, 1964, is hereby further amended by amending the wording of paragraphs 6 and 7 (amendments in said paragraphs underlined), and by adding paragraphs 8 (A) and 15 (c), as follows:

6

The following-named individuals are now, and at all times material herein have been, supervisors of Respondent within the meaning of Section 2(11) of the Act:

Mrs. Jean Brooks	Robert M. Weinacker, Jr.
Mrs. Myrtis Chaillot	Colen Taylor
William Chavers	Bob Lew
Cecil Laws	Claude Tingle
Mrs. Mary Richardson	Horace Weaver

7.

Respondent, by its supervisor and agent Mrs. Jean Brooks, at its Mobile, Alabama, store *and in the home of an employee*, on or about the dates indicated, engaged in the following acts and conduct:

(a) During the month of January 1964, interrogated employees about their union activities, desires, and feelings;

(b) During the month of January 1964, stated that Respondent would close the store, before it would allow Respondent's employees to be represented by a union;

(c) During the month of January 1964, told employees that anyone who has anything to do with the Union would be fired.

8(A)

Respondent, by its supervisor and agent William Chavers, at its Mobile, Alabama, store, on or about September 17, 1964, interrogated an employee concerning whether or not he had been subpenaed to appear at a hearing and threatened to fire the employee if he complied with the subpena.

15.

(c) During the month of January or February, interrogated employees concerning their union activities.

PLEASE TAKE NOTICE that, pursuant to Section 102.20 and 102.21 of the Board's Rules and Regulations, Series 8, as amended, the Respondent shall file with the Regional Director of the Fifteenth Region, acting in this matter as agent of the National Labor Relations Board, an original and 4 copies of an answer to paragraphs 6, 7, 8(A) and 15(c) of the Amendments to Complaint within 10 days from the service hereof, and that unless it does so, all paragraphs with respect to said Amendments to Complaint shall be deemed to be admitted to be true and may be so found by the Board.

Dated at New Orleans, Louisiana this 30th day of September 1964.

John F. LeBus, Regional Director
National Labor Relations Board
Fifteenth Region

T6024 Federal Building (Loyola)
701 Loyola Avenue
New Orleans, Louisiana 70113

RESPONDENT'S EXHIBIT NO. 9

[Weinacker Brothers, Inc. and Lorenzo Matthews, et al., Consolidated Cases Nos. 15-CA-2486-1, et al.]

[68] ANSWER

Comes now Weinacker Brothers, Inc. respondent herein, through undersigned counsel, and reserving all its rights, makes the following Answer to the Complaint

1

Respondent admits the allegations contained in paragraph 1 of the Complaint

2

Respondent admits the allegations contained in paragraph 2 of the Complaint

3

Respondent admits the allegations contained in paragraph 3 of the Complaint

4

Respondent denies the allegations contained in paragraph 4 of the Complaint

5

Respondent admits the allegations contained in paragraph 5 of the Complaint

6.

Respondent denies the allegations contained in paragraph 6 of the Complaint except that it admits that Mrs. Jean Brooks, Mrs. Myrtis [69] Chaillot, Cecil (illegible), Robert M. Weimacker, Jr., Colen Taylor, Claude Tingle and Horace Weaver are supervisors within the meaning of Section 2(11) of the Act.

7.

Respondent denies the allegations contained in paragraph 7 of the Complaint.

8.

Respondent denies the allegations contained in paragraph 8 of the Complaint.

9.

Respondent denies the allegations contained in paragraph 9 of the Complaint.

10.

Respondent denies the allegations contained in paragraph 10 of the Complaint.

11.

Respondent denies the allegations contained in paragraph 11 of the Complaint.

12.

Respondent denies the allegations contained in paragraph 12 of the Complaint.

13.

Respondent denies the allegations contained in paragraph 13 of the Complaint.

14.

Respondent denies the allegations contained in paragraph 14 of the Complaint.

15.

Respondent denies the allegations contained in paragraph 15 of the Complaint.

16.

Respondent denies the allegations contained in paragraph 16 of the Complaint.

17.

Respondent denies the allegations contained in paragraph 17 of the Complaint.

18.

Respondent denies the allegations contained in paragraph 18 [70] of the Complaint.

19.

Respondent denies the allegations contained in paragraph 19 of the Complaint.

20.

Respondent denies the allegations contained in paragraph 20 of the Complaint.

21.

Respondent denies the allegations contained in paragraph 21 of the Complaint.

22.

Respondent denies the allegations contained in paragraph 22 of the Complaint.

23.

Respondent denies the allegations contained in paragraph 23 of the Complaint.

24.

Respondent denies the allegations contained in paragraph 24 of the Complaint.

25.

Respondent denies the allegations contained in paragraph 25 of the Complaint.

26.

Respondent denies the allegations contained in paragraph 26 of the Complaint.

27.

Respondent denies the allegations contained in paragraph 27 of the Complaint.

28.

Respondent denies the allegations contained in paragraph 28 of the Complaint.

WHEREFORE, the premises considered, respondent prays that after due proceedings had the Complaint be dismissed in its entirety.

Respectfully submitted this day of September, 1964

s/ Bert S. Nettles
Johnston, Johnston & Nettles,
First National Bank Annex
Mobile, Alabama.

s/ Richard C. Keenan
Kullman & Lang
1010 Whitney Building
New Orleans, Louisiana
Counsel for Weinacker Brothers, Inc.

[Certificate of Service Omitted in Printing]

RESPONDENT'S EXHIBIT NO. 2B

[Weinacker Brothers, Inc. and Lorenzo Matthews, et al., Consolidated Cases Nos. 15-CA-2486-1, et al., before the National Labor Relations Board, Fifteenth Region]

[72] AMENDMENTS TO ANSWER

Comes now Weinacker Brothers, Inc., respondent herein, through undersigned counsel and reserving all its rights,

makes the following Answer to the Amendments to Complaint, dated September 16, 1964:

17.

Respondent denies the allegations contained in the amended paragraph 17 of the complaint.

25(a).

Respondent denies the allegations contained in the amended paragraph 25(a) of the complaint.

28.

Respondent denies the allegations contained in the amended paragraph 28 of the complaint.

s/Bert S. Nettles
Johnston, Johnston & Nettles
Mobile, Alabama
s/ Richard C. Keenan
Kullman & Lang
New Orleans, Louisiana

Counsel for Weinacker Brothers, Inc. and Robert M. Weinacker, Jr.

[Certificate of Service Omitted in Printing]

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[73] ORDER SETTING PLEA TO TEST SUFFICIENCY OF PLEA TO JURISDICTION

In the above styled cause, the matter of the plea to jurisdiction as filed by the Respondents herein being brought to the Court's attention and at the request of the solicitor for the Respondents; it is ORDERED that the plea to jurisdiction be and the same is hereby set for hearing this day, January 25, 1965, at 2:30 p.m.

Dated January 25, 1965.

s/ Dan T. McCall, Jr.
Judge

ORDER OVERRULING PLEAS TO JURISDICTION

This cause having regularly been set down for hearing to test the sufficiency of the plea to jurisdiction as filed by the Respondents herein, and the Court hearing the arguments of the respective solicitors hereto and duly considering same, the Court is of the opinion that said plea to jurisdiction should be overruled.

It is, therefore, ORDERED, ADJUDGED and DECREED by the Court that the plea to jurisdiction as filed by the Respondents in the above styled cause be and the same hereby is overruled.

Dated, January 25, 1965.

s/ Dan T. McCall, Jr.
Judge

ANSWER TO THE AMENDED PETITION AND MOTION TO DISSOLVE AND DISMISS

Now come the Respondents, without waiving the plea to the jurisdiction of the court heretofore filed, but specifically reserving the same in excepting to the ruling of the court on January 25, 1965 and file this their answer to the amended bill of complaint and shows as follows:

ONE

The allegations of Paragraph One are admitted.

TWO

The allegations of Paragraph Two are admitted.

THREE

Respondents have no personal knowledge of the truth of Paragraph Three and request strict proof thereof.

FOUR

The Respondents admit they are members of Respondent Retail Clerks Union, Local No. 455, in Mobile, and are em-

gaged in lawful picketing the shopping center at Government and Catherine Streets located in Mobile, Alabama. The Respondents deny that they jointly and severally and as members of the named Union trespassed illegally on the property of the complainant.

FIVE

Respondents deny that they have continuously unlawfully trespassed and have deprived the complainant of the peaceful possession and enjoyment of its property and premises and that it has interfered with the complainant's right of peaceful possession of its property and that they have interfered with the complainant in the conduct of its business and the operation of the above described shopping center. Respondents further deny that the complainant has been damaged in that it has lost the peaceful use of its property and the right of operating its business without the interference from any lawful trespassing on its premises.

In further answer, Respondents show that the labor dispute involved affects interstate commerce and the National Labor Relations Board has exclusive jurisdiction over the allegations of complainant's petition, as amended, and if the same be illegal under Federal law, then this Honorable Court has no jurisdiction to grant redress or an injunction or any other relief prayed for in the original petition, as amended. If the conduct of the Respondents complained of by the complainant is not illegal under Federal law, then it is protected under the National Labor Relations Act, as amended, and in that event this court does not have jurisdiction to grant redress or an injunction or any other relief prayed for in the amended bill of complaint.

SIX

Respondents admit they have legally picketed back and forth in front of the door of the shopping center but they have no personal knowledge that the area is owned by the complainant.

SEVEN

Respondents admit that they are lawfully picketing the complainant's [75] business in accordance with Federal Law. Respondents deny that their picketing has become more intense since the court entertained the complainant's petition. Respondents deny that they are causing irreparable injury to the complainant and are obstructing customers from leaving or entering complainant's place of business. Respondents further deny that their acts are outside the realm of peaceful picketing and contend that their acts are legal under the National Labor Relations Act and the First and Fourteenth Amendments to the Constitution of the United States.

EIGHT

Respondents deny that it is necessary for this Honorable Court to grant injunctive relief and further state that this Honorable Court has no jurisdiction to grant redress or an injunction or any other relief prayed for in the amended bill of complaint.

In further answer, the Respondents show that all their activities have been legal under the Federal Law, Alabama Law and to enjoin the same would infringe upon the rights of the Respondents herein and all the members of the Retail Clerks International Association, the laws of the United States and the First and Fourteenth Amendments to the Constitution of the United States. Respondents further move that the exhibits presented to the court in the previous plea to the jurisdiction of the court be incorporated and made a part hereof to this answer and motion.

WHEREFORE, Respondents move that this answer be considered and sustained and that complainant's amended bill and original bill for and injunction be dismissed and the temporary restraining order heretofore issued on the amended bill of complaint be *dissolved* [in ink] and damages and costs of court be taxed against the complainant.

WHEREFORE, Respondents further pray the court that if they are mistaken in the relief sought or should other relief be appropriate, then they pray for additional relief as they may show themselves entitled to receive, premises considered.

Respectfully submitted,
Simon and Wood
By: s/ Otto E. Simon
Solicitor for Respondents

STATE OF ALABAMA
[76] COUNTY OF MOBILE

Personally appeared before me, the undersigned officer authorized by law to administer oaths, CLIFFORD TAGGART, who, after first being duly sworn, deposes and says that he is Business Manager of the Respondent Local 458, Retail Clerks International Association, AFL-CIO; and in his capacity as an individual Respondent, has knowledge of the facts recited in the above and foregoing Answer and the same are true; and those facts alleged on information and belief he verily believes to be true.

s/ Clifford Taggart

Sworn to and subscribed before me this 1st day of February, 1965.

s/ Helen Knapp
Notary Public, State of Ala.-at-large

STATE OF ALABAMA)
COUNTY OF MOBILE)

Personally appeared before me, the undersigned officer authorized by law to administer oaths, RILEY E. HOBBS, who, after first being duly sworn, deposes and says that he is a member of the Respondent Local 458, Retail Clerks International Association, AFL-CIO; and in his capacity as an individual Respondent, has knowledge of the facts recited in the above and foregoing Answer and the same are true; and those facts alleged on information and belief he verily believes to be true.

s/ Riley E. Hobbs

Sworn to and subscribed before me this 1st day of February, 1965.

s/ Helen Knapp
Notary Public, State of Ala.-at-large

[Certificate of Service Omitted in Printing]

Filed February 1st, 1965
s/ W. Elsworth Haughton, Register

[76A] Respondents' Exhibits 1-9 inclusive, heretofore attached to the Plea to Jurisdiction of the Respondents', set out in this transcript on pages 23-72, inclusive, are incorporated and made a part of the Answer to the Amended Petition and Motion to Dissolve and Dismiss, are not recopied at this point.

[77] ORDER SETTING HEARING

By order of the undersigned, it is ORDERED that the hearing of the motion to dissolve as filed by the Respondents be and the same hereby is set for hearing on February 15, 1965 at 2:00 P.M.

Dated February 12, 1965

s/ Dan T. McCall, Jr.
Judge

ORDER RESETTING HEARING

By order of the undersigned, it is ORDERED that the hearing of the motion to dissolve as filed by the Respondents be and the same hereby is reset for hearing on February 26, 1965 at 2:00 P.M.

Dated, February 15, 1965.

s/ Dan T. McCall, Jr.
Judge

ORDER CONTINUING HEARING ON MOTION TO DISSOLVE AND DISMISS

By consent of the solicitors of record in the above styled cause it is ORDERED by the Court that the hearing on the motion to dissolve and dismiss set for hearing on Tuesday, February 28, 1965 be and the same hereby is continued to Friday, March 5, 1965 at 2:30 P.M.

Dated February 25, 1965.

Daniel McCall, Jr.
Judge

ORDER CONTINUING HEARING ON MOTION

At the request of the solicitors of record it is ORDERED by the Court that the hearing on the motion to dissolve and dismiss as filed in said cause be and hereby is continued to March 9, 1965 at 2:30 P.M.

Dated March 5, 1965.

Daniel McCall, Jr.
Judge

ORDER OF SUBMISSION ON MOTION TO DISSOLVE AND DISMISS

This cause coming on to be heard on this day is submitted for decree upon the motion to dissolve and dismiss as filed by the Respondents in the above styled cause.

Dated March 9, 1965.

Opinion and Judgment of the Circuit Court of Mobile County, Alabama, in Equity

The Court has read the briefs submitted by counsel for the respective parties and the reported decisions contained therein and having fully understood and considered the matter, the Court is of the opinion and recognizes that where the activity is arguably subject to Section 7 and 8 of the National Labor Relations Act, the State Court is divested of jurisdiction and must yield to the primary jurisdiction of the National Labor Relations Board, and, generally, the "Pre-emption Doctrine" to bar actions by State Court, under State law is applied where peaceful picketing is carried on on a public street on a privately owned street or parking area which has lost its identity as such and partakes "of the nature of a city street".

But where a storeowner invites prospective customers to come to his store to trade and to park on his grounds, making available the latter while doing business with the storeowner, the invitation is for one particular purpose, not for any purpose to the general public, and the use of the storeowner's parking lot and sidewalks is of a purely private character over which the State Courts retain jurisdiction to issue, upon seeking injunctive relief to bar trespassing. Hood v. Stafford, 315 SW 2nd, 706.

The Court is of the further opinion that under the facts of the case at bar submitted by the Respondent, to trespass on the Complainant's premises by picketing, after being requested to leave. Freedom of speech guaranteed to the Respondents in the First and Fourteenth Amendments to the Federal Constitution, did not give them the right to remain on the parking area and sidewalks of the Complainant after they were ordered to leave.

It is Accordingly Ordered, Adjudged and Decreed by the Court that this Court does have jurisdiction of the subject matter involved in this suit which has not been divested by the National Labor Relations Act.

It Is Further Ordered, And Decreed by the Court that the Respondents, by going on the Complainant's premises for the purpose of picketing the Complainant's merchandising, were trespassers, and were employing an unlawful means of exercising their right to picket and that their activity in this respect is subject to injunctive relief by a State Court of Equity.

It Is Further Ordered, And Decreed by the Court that Respondents' Motion to Dissolve the Writ of Temporary Injunction heretofore issued by this Court and to Dismiss the Complainant's Verified Bill and Petition be and the same is hereby denied.

It Is Further Ordered, And Decreed by the Court that the Writ of Temporary Injunction heretofore issued by this Court be and the same is hereby continued until ordered dissolved by this Court or by law.

Ordered, And Decreed at Mobile, Alabama, this 1st day of April, 1963.

[illegible]
Judge.

NOTICE OF APPEAL

Come now Clifford Taggart and Retail Clerks Union Local No. 488 Respondents in the above entitled cause, and hereby gives Notice of Appeal to the Supreme Court of Alabama from an Order of the Circuit Court of Mobile County, Alabama, In Equity rendered the [83] 1st day of April, 1965 denying the Respondents' Motion to Dissolve a Writ of Temporary Injunction and to Dismiss the Complainant's Verified Bill and Petition.

Simon and Wood
By: s/ Otto F. Simon
Solicitor of Record for Respondents

Filed April 9, 1965
s/ W. Elsworth Haughton, Register

[84] IN THE SUPREME COURT OF THE STATE OF ALABAMA

CLIFFORD TAGGART, RILEY HOBBS, JAMES STUCKEY, Individually and as President of Retail Clerks Union Local 488 of Mobile, and RETAIL CLERKS' UNION LOCAL 488 OF MOBILE,

Appellants,

vs.

WEINACKER'S INC., a Corporation,

Appellee.

Appeal from the Circuit Court of Mobile County, Alabama, In Equity.

ASSIGNMENT OF ERRORS

Comes the Appellants, Clifford Taggart and Retail Clerks Union Local 488 of Mobile, in the above entitled cause and show unto the Court that there is manifest error in the following [85] particulars in the proceedings of the Circuit Court

of Mobile County, Alabama, in Equity sitting, to the great damage and prejudice of these Appellants, and as grounds of error Appellants assign the following separately and severally:

1. The trial court erred in issuing a Writ of Injunction on January 22, 1965. (Transcript pg. 141)

2. The trial court erred in its order of January 28, 1965, overruling the Respondents' pleas to the jurisdiction. (Transcript pg. 733)

3. The trial court erred in its order of April 1, 1965 wherein the Court decreed it had jurisdiction over the subject matter of the suit. (Transcript pg. 821)

4. The trial court erred in its order of April 1, 1965 wherein the court decreed that jurisdiction had not been divested by the National Labor Relations Act, as amended. (Transcript pg. 821)

[89] 5. The trial court erred in its order of April 1, 1965 wherein the court decreed the Respondents were employing an unlawful means of exercising their right to picket. (Transcript pg. 821)

6. The trial court erred in its order of April 1, 1965 wherein the court decreed that the Respondents' picketing activities were subject to injunctive relief by a State Court of Equity. (Transcript pg. 821)

7. The trial court's ruling of April 1, 1965 that the court had jurisdiction of the subject matter involved in the suit was contrary to the law of the case. (Transcript pg. 821)

8. The trial court erred in its order of April 1, 1965 denying the Respondents' Motion to Dissolve the Writ of Temporary Injunction and to Dismiss the Complainants Verified Bill and Petition. (Transcript pg. 821)

9. The trial court erred in its order of April 1, 1965 continuing the Writ of Temporary Injunction. (Transcript pg. 821)

10. The order of the trial court on April 1, 1965 holding that the primary jurisdiction of the subject matter in dispute had not been pre-empted by the National Labor Relations Board and denying the Respondents' motion to Dissolve the Writ of Temporary Injunction and to Dismiss the Complainants' Sic Verified Bill and Petition was contrary to the law in this cause. (Transcript pg. 82)

Dated at Mobile, Alabama, this 2nd day of June, 1965.

SIMON AND WOOD

By Otto I. Simon
Attorney For Appellants
1010 Van Antwerp Building
Mobile, Alabama

[Certificate of service omitted]

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[92] MOTION TO AFFIRM FOR FAILURE OF APPELLANTS TO PRESENT ANYTHING FOR REVIEW

Now comes Appellee in the above styled cause and respectfully moves this Court to affirm the decision of the lower court in the above styled cause and as grounds therefor represents and shows unto the court as follows:

1. Appellants in their brief group together for argument their Assignments of Error number 1, 3, 4, and 10. (Appellants' brief pp. 5-15). Appellants' Assignment of Error number 2 deals with the ruling of the trial court overruling respondents' plea to the jurisdiction in its order of January 28, 1965. Appellants' Assignments of Error number 5, 6, 7, 8, and 9 are unrelated to Assignment of Error number 1 and attempt to assign as error various aspects of the court's order of April 1, 1965 denying respondents' motion to dissolve the temporary injunction and dismiss the bill. Assignment of Error number 2 is not sufficiently specific under Supreme Court Rule Number One in that it fails to specify concisely in what the error consists and hence such assign-

ment is without merit. Assignment of Error number 7 presents nothing for review and hence is without merit, hence all errors if any in these assignments of error have been waived, or present nothing for review.

2. Appellants in their brief group together for argument the remainder of their Assignments of Error numbered 1, 5, 6, 8, and 9 (Appellants' Brief, pp. 14-18). Assignment of Error number 1 that

> "The trial court erred in issuing a Writ of Injunction on January 22, 1965." (Transcript pg. 14)

is not sufficiently specific under Supreme Court Rule Number One and [93] attempts to assign as error a non-appealable interlocutory order of the court and the issuance of said preliminary ex parte injunction was proper, hence said assignment is without merit. The remaining Assignments of Error numbered 5, 6, 8, and 9, argued together with Assignment of Error number 1, are unrelated to Assignment of Error number 1 and attempt to assign as error various aspects of the trial court's order of April 1, 1965, denying the Respondents' Motion to Dissolve the Temporary Injunction and to dismiss the Plaintiff's verified bill of complaint; hence all of said assignments either present nothing for review or are without merit or are waived.

Wherefore, Appellants have presented nothing for this court to review and the judgment is due to be affirmed.

M. A. Marsal and
Howell, Johnston & Langford
as Attorneys for Appellee
By: Jerry L. Langford

[Certificate of service omitted]

In the Supreme Court of Alabama — Wednesday, November 10, 1965

[Caption omitted]

Upon the parties by attorneys and argue and submit this cause on motion and mature consideration

Opinion of the Supreme Court of Alabama

Filed September 19, 1968

THE STATE OF ALABAMA — JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

SPECIAL SESSION, 1968.

1 Div. 295

CLIFFORD TAGGART, ET AL.

v.

WEINACKER'S, INC., A CORP.

Appeal from Mobile Circuit Court, In Equity

COLEMAN, JUSTICE.

Respondents appeal from a decree denying their motion to dissolve a temporary injunction.

Complainant filed a verified bill of complaint averring that it possessed and operated a shopping center at the intersection of Government and Catherine streets in Mobile, and that the continuing trespass by respondents on complainant's lot deprived it of peaceful possession and caused it irreparable injury.

On a petition, treated as an amendment to the bill, the court granted a temporary injunction restraining the trespass.

Respondents filed a plea to the jurisdiction asserting that state court jurisdiction of the subject matter had been pre-empted by the National Labor Relations Act and that the National Labor Relations Board had taken jurisdiction of the dispute between these parties in proceedings filed by respondents with the Board, and that the Board

had taken jurisdiction and had certified the respondent union as bargaining representative of the employees of complainant on April 16, 1964, prior to filing of complainant's bill on January 21, 1965. It appears that proceedings were had before the Board, which did not include the subject matter of the instant suit. The court overruled the plea.

Respondents then filed an answer and motion to dissolve the temporary injunction, in which respondents expressly reserved exception to the ruling on the plea, and again raised objection to the court's jurisdiction, and prayed for dissolution of the injunction.

The cause was heard and was submitted at conclusion of the hearing on certified bill, petition, affidavits, answer, and motion to dissolve.

The court again decided that it had jurisdiction and denied the motion to dissolve. Respondents appealed.

Motion to Affirm

Respondents have made ten assignments of error and argue them in two groups. Respondents argue assignment 2, 3, 4, 7, and 10 in bulk in one group, and assignments 1, 5, 6, 8, and 9 in bulk in another group.

Complainant says that none of the assignments in each group are bad and not sufficient to invite review, are not related to other assignments argued in bulk in the same groups, and therefore, the other assignments in the two groups ought not to be considered and the decree appealed from should be affirmed.

It is true that where unrelated assignments are argued together, and one is without merit, the others will not be considered. *National Association For The Advancement of Colored People v. State*, 274 Ala. 544, 150 So. 2d 677 (see cited in Ala. Digest, Appeal & Error, Key No. 730).

but this rule applies only when the assignments are not kindred or related. *Southern Electric Generating Company* v. *Lance*, 269 Ala. 25, 33, 110 So. 2d 627. Where the assignments of error are so related that they may be treated as being predicated upon a single argument, the fact that they are argued in bulk is not objectionable. *Hartford Fire Ins. Co.* v. *Clark*, 258 Ala. 141, 152, 61 So. 2d 19; *Southern Electric Generating Company* v. *Lance*, supra; *Socier* v. *Woodard*, 264 Ala. 514, 518, 88 So. 2d 783; *Bryan* v. *W. T. Smith Lumber Co.*, 278 Ala. 538, 542, 179 So. 2d 287. In a case where three assignments were argued together and were related or kindred, this court did consider them separately. *Gilliland & Echols Farm Supply & Hatchery* v. *Credit Equipment Corp.*, 269 Ala. 190, 195, 112 So. 2d 331.

Where several assignments are governed by the same legal principles and argument, it is not objectionable to argue them in bulk in the brief. *Hartford Fire Ins. Co.* v. *Clark*, supra; *Socier v. Woodard, supra; Bryan* v. *W. T. Smith Lumber Co.*, supra.

In the first group, assignments 2, 3, 4, 7, and 10 are argued together. They recite:

> "2. The trial court erred in its order of January 25, 1965 overruling the Respondents' plea to the jurisdiction. (Transcript pg. 73).
>
> "3. The trial court erred in its order of April 1, 1965 wherein the court decreed it had jurisdiction over the subject matter of the suit. (Transcript pg. 82).
>
> "4. The trial court erred in its order of April 1, 1965 wherein the court decreed that jurisdiction had not been divested by the National Labor Relations Act, as amended. (Transcript pg. 82).
>
> ". . . . . .

"7. The trial court's ruling of April 1, 1965 that the court had jurisdiction of the subject matter involved in the suit was contrary to the law of this cause. (Transcript pg. 82).

". . . . . .

"10. The order of the trial court on April 1, 1965 holding that the primary jurisdiction of the subject matter in dispute had not been pre-empted by the National Labor Relations Board and denying the Respondents' Motion to Dissolve the Writ of Temporary Injunction and to Dismiss the Complainants' (sic) Verified Bill and Petition was contrary to the law in this cause. (Transcript pg. 82)."

Complainant argues that assignment 2 is bad because it fails to show how or in what way the court erred. We are not inclined to agree with this argument. The assignment says the court erred in overruling respondents' plea to the jurisdiction. This shows how the court erred.

Complainant says assignment 7 and 10 are bad and complainant is probably correct. These assignments do not assert that the court erred and merely say that the ruling was contrary to law. *National Association For The Advancement of Colored People v. State*, supra, and *Andrews v. May*, 277 Ala. 248, 249, [1], 168 So. 2d 619.

Even if assignments 2, 7, and 10 are bad, however, all the assignments in this group are related because they are governed by the same legal principles and argument, to wit, that the trial court had been divested of jurisdiction because the National Labor Relations Act had pre-empted jurisdiction of the subject matter of the suit. Assignments 3 and 4 appear to be good assignments and we will consider them, although other related assignments argued in the group are bad. *Gilliland & Echols Farm Supply & Hatchery v. Credit Equipment Corp.*, supra.

In the second group of assignments, which are argued together, is assignment 1 which recites:

> "1. The trial court erred in issuing a Writ of Injunction on January 22, 1965. (Transcript pg. 14)."

The order of January 22, 1963, was made without the hearing provided for by § 1054, Title 7, Code 1940. No appeal lies from the order granting the injunction unless the order is shown by the record to have been made, or purports to have been made, after a hearing as provided by § 1054, Title 7, Code 1940 (§ 8304, Code 1923). *Berman* v. *Wreck-A-Pair Building Co.*, 234 Ala. 293, 297, 175 So. 269. The order of January 22, 1965, granting the injunction will not support an appeal.

In an appeal involving a similar order granting a temporary injunction without a hearing as provided by § 1054, Title 7, this court said:

> "In our opinion, the assignments of error which challenge the decree of March 19, 1960, in so far as it orders the issuance of a temporary injunction present nothing for our review, for an appeal does not lie from an order or decree granting a temporary injunction unless the record shows that the order or decree was made or purported to be made after a hearing as provided by § 1054, Title 7, Code 1940. (Citations Omitted)
>
> "The appellant's remedy in regard to the temporary injunction was by way of motion to dissolve under the provisions of § 1052, Title 7, Code 1940, and if the ruling was adverse to appeal therefrom as provided by § 757, Title 7, Code 1940." *Brooks* v. *Everett*, 271 Ala. 380, 384, 124 So. 2d 100.

See also: *WGOK, Inc.* v. *WMOZ, Inc.*, 275 Ala. 264, 265, 154 So. 2d 22.

Complainant says that assignment 1 presents nothing for review. We agree.

Complainant says further that because assignment 1 presents nothing for review and is argued in bulk together with assignments 5, 6, 8, and 9, none of the assignments argued in bulk in this group are to be considered.

We are of opinion that all assignments in the second group are related because they depend upon the same legal principles and argument, to wit, that the First and Fourteenth Amendments to the Constitution of the United States do not permit the state to enjoin respondents from picketing on complainant's property, and, therefore, that the court erred in denying the motion to dissolve. Assignment 8 recites:

> "8. The trial court erred in its order of April 1, 1965 denying the Respondents' Motion to Dissolve the Writ of Temporary Injunction and to Dismiss the Complainants' (sic) Verified Bill and Petition. (Transcript pg. 82)."

Assignment 8 asserts that the court erred and states how the court erred. We think it has not been shown that this is a bad assignment, and we will consider it.

For these reasons, the motion to affirm is overruled.

On the Merits.

Respondents argue that the trial court erred in two particulars, first, in determining that it had jurisdiction of the subject matter of the suit.

In support of this argument, respondents cite a number of decisions which hold that under the Labor Management Relations Act as amended, U.S.C.A., Title 29, § 141, et seq., state courts are excluded from jurisdiction over peaceful picketing and that exclusive jurisdiction has been conferred on the National Labor Relations Board. Re-

spondents say that the concerted activity of picketing is subject to control and regulation by the Board, that the Board has assumed jurisdiction of the dispute between these parties in other particulars, and that complainant's only remedy is by bringing the subject matter of the instant suit to the attention of the Board, which has not expressly declined jurisdiction over the activity here enjoined.

In support of this contention, respondents cite *San Diego Bldg. Trades Council* v. *Garmon*, 359 U.S. 236, 3 L. ed 2d 775, 79 S. Ct. 773, in which the court undertook to state the rule of federal pre-emption as follows:

> ". . . . When the exercise of state power over a particular area of activity threatened interference with the clearly indicated policy of industrial relations, it has been judicially necessary to preclude the States from acting. However, due regard for the presuppositions of our embracing federal system, including the principle of diffusion of power not as a matter of doctrinaire localism but as a promoter of democracy, has required us not to find withdrawal from the States of power to regulate where the activity regulated was a merely peripheral concern of the Labor Management Relations Act. (Citation Omitted) Or where the regulated conduct touched interests so deeply rooted in local feeling and responsibility that, in the absence of compelling congressional direction, we could not infer that Congress had deprived the States of the power to act.
>
> "When it is clear or may fairly be assumed that the activities which a State purports to regulate are protected by § 7 of the National Labor Relations Act, or constitute an unfair labor practice under § 8, due regard for the federal enactment requires that state jurisdiction must yield. . . . .
>
> ". . . . . .

". . . . When an activity is arguably subject to § 7 or § 8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted. (Citation Omitted)" (3 L. ed 2d at pages 782 and 783)

The last cited case was the second appeal to the United States Supreme Court in the same lawsuit. In the first appeal, 353 U.S. 26, 1 L. ed 2d 618, 77 S. Ct. 607, 609, the court had vacated the judgment of a state court enjoining peaceful picketing of a retail lumber yard. As we understand the opinion on second appeal in 3 L. ed 2d at page 784, the court held that because the ". . . . National Labor Relations Board has not adjudicated the status of the conduct for which the State . . . . seeks to give a remedy in damages, and since such activity is arguably within the compass of § 7 or § 8 of the Act, the State's jurisdiction is displaced."

In opinion on first appeal in 1 L. ed 2d, the court vacated the injunction on authority of two other cases decided the same day; i. e., *Guss* v. *Utah Labor Relations Board*, 353 U.S. 1, 1 L. ed 2d 601, 77 S. Ct. 598, 609, and *Amalgamated Meat Cutters* v. *Fairlawn Meats*, 353 U.S. 20, 1 L. ed 2d 613, 77 S. Ct. 604.

In *Guss*, the National Board had declined jurisdiction of charges of unfair labor practices brought by the union against an employer. The National Board declined to act, but did not cede jurisdiction to the state agency as authorized by § 10(a) of the National Act. The union filed the same charges with the Utah Labor Relations Board which found that it had jurisdiction and granted relief. When the case reached the United States Supreme Court, that court held that the proviso to § 10(a) is the exclusive means whereby states may be enabled to act concerning the matters which Congress has entrusted to the National

Board; that the activity complained of was an unfair labor practice under the National Act; that, although the National Board had declined to act, it had not ceded jurisdiction in the only authorized way; and, therefore, the state agency was powerless to act.

In *Fairlawn*, a state court enjoined the union from picketing the premises of an employer who operated three meat markets in separated localities, from trespassing upon the employer's premises, and from exerting secondary pressure on the suppliers of the employer. The United States Supreme Court assumed that ". . . . it was obvious that the Board would decline jurisdiction." 1 L. ed 2d at page 615. The writer of the Summary, at page 601 in 1 L. ed 2d, states that the court vacated the judgment granting the injunction on the ground that even if the National Board would obviously decline jurisdiction, the state court had no power to enjoin the union conduct involved because it was of that kind regulated by the National Board. The concluding paragraph of the court's opinion recites:

> "One final point remains to be considered. At two of respondent's stores, located in suburban shopping centers, the picketing occurred on land owned by or leased to respondent though open to the public for access to the stores. As one of the reasons for finding the picketing unlawful, the Court of Appeals recited this fact, and 'trespassing upon plaintiff's property' is one of the activities specifically enjoined. Whether a State may frame and enforce an injunction aimed narrowly at a trespass of this sort is a question that is not here. Here the unitary judgment of the Ohio court was based on the erroneous premise that it had power to reach the union's conduct in its entirety. Whether its conclusion as to the mere act of trespass would have been the same outside the context of petitioner's other conduct we cannot know. The judgment

> therefore is vacated and the case remanded for proceedings not inconsistent with this opinion." (1 L. ed 2d at pages 616 and 617)

The instant injunction is ". . . . aimed narrowly at a trespass of this sort . . . ." and the question not presented in *Fairlawn* is presented here. Moreover, as we understand *Fairlawn*, the opinion does not indicate that the picketing on employer's property was carried on in such a manner as to obstruct the customers of the complainant in entering and leaving entrances to the store building.

In a recent case, *Amalgamated Food Employees Union Local 590* v. *Logan Valley Plaza*, —— U.S. ——, 20 L. ed 2d 603, 88 S. Ct. ——, decided May 20, 1968, the court reversed a judgment of the Supreme Court of Pennsylvania enjoining peaceful picketing in a shopping center. The United States Supreme Court said:

> ". . . . All we decide here is that because the shopping center serves as the community business block 'and is freely accessible and open to the people in the area and those passing through,' March v. Alabama, 326 US, at 508, 90 L Ed at 269, the State may not delegate the power, through the use of its trespass laws, wholly to exclude those members of the public wishing to exercise their First Amendment rights on the premises in a manner and for a purpose generally consonant with the use to which the property is actually put." (20 L. ed 2d at pages 612 and 613)

Although complainant avers in its bill that it operates "a shopping center," we do not think that the findings of the trial court justify the conclusion that complainant's premises are a shopping center such as the one in *Logan Plaza* where the perimeter of Logan Valley Mall was a little less than 1.1 miles; the Mall contained two commercial enterprises, Weis Markets and Sears, Roebuck and Co. at the time of trial; and fifteen other commercial es-

tablishments were situated in the shopping center when the opinion was delivered. See Note 8, 20 L. ed 2d 611. Neither do we understand that the trespass was such that the picketing obstructed customers entering or leaving the store.

In the case at bar, as we understand it, the correctness of the trial court's findings is not challenged. The court found:

> ". . . . that a labor dispute exists between the Complainant, Weinacker's Inc., the employer, and the Respondents, Clifford Taggart, Riley Hobbs, James Stuckey and Retail Clerks Union, Local 458 of Mobile, that the Respondent, Retail Clerks Union, Local 458 of Mobile, of which the other Respondents are members, has been certified by the National Labor Relations Board as a bargaining representative for the employees of the Complainant, that numerous differences have existed and do now exist between the Complainant and parties Respondent over the matter of a collective bargaining agreement between them, and when contract negotiations broke down, the Respondent Union called a strike which is now in progress. Picket lines have been established by the Union on both of the public sidewalks of the City of Mobile immediately adjacent to the public streets and adjoining the real property of the Complainant on which its storebuilding is located and its business is conducted. Complainant, Weinacker's, Inc., conducts a general department store business for the sale of groceries, dry goods, hardware, drugs and prepared foods in a single building, which is set-back from the public street on the east and on the south, which building and premises are under the single ownership of the Complainant. The main entrance to said building fronts on the public street (Government Street) to the south. Across Catherine Street (a public street)

to the east, Complainant operates an automobile service station. South of the front of Complainant's storebuilding and between it and the public street, complainant maintains a motor vehicle parking area for the use and convenience of its customers in parking their automobiles while in and about their business with the Complainant, and Complainant also maintains private walkways over its premises leading up to its storebuilding, and sidewalks around its storebuilding. Picketing was first carried on by the Respondents on the public sidewalks of the City of Mobile and later on the sidewalks on the Complainant's premises and in front of the entrances to Complainant's storebuilding. While this picketing on Complainant's premises and in front of the entrances to its building has been without any acts of actual violence or threats of violence to any persons, it has been carried on in such a manner as to obstruct the customers of the Complainant in entering and leaving the entrances to said building on the south or Government Street side thereof. Said picketing in the manner heretofore described continued after the Complainant, through one of its officials, had requested the Respondents not to trespass on Company premises; however, in obedience to the Writ of Temporary Injunction, the Respondents have confined their picketing of Complainant's premises to the public sidewalks of the City of Mobile adjoining the same. This Court's Writ of Temporary Injunction restrained and enjoined the Respondents, their agents, servants, employees and any and all persons acting in concert with them from trespassing upon the real property of the Complainant and from interfering (sic) with its property and the right of ingress and egress thereto."

In support of their contentions, respondents cite the following cases which we here number for reference below:

(1) *Toomer* v. *Local No. 995, IBEW*, (La. App.), 131 So. 2d 248; (2) *Barksdale and LeBlanc* v. *Local No. 130, IBEW*, (La. App.), 143 So. 2d 770; (3) *Broadcast Service of Mobile, Inc.* v. *Local 1264, IBEW*, 276 Ala. 93, 159 So. 2d 452; (4) *Maryland* v. *Williams*, 44 LRRM 2357, 37 Labor Cases, ¶ 65,708; (5) *Marsh* v. *Alabama*, 326 U.S. 501, 90 L. ed 265, 66 S. Ct. 276; (6) *Freeman* v. *Retail Clerks Union*, 58 Wash. 2d 426, 363 P. 2d 803; (7) *Schwartz-Torrance Investment Corp.* v. *Bakery & Confectionery Workers' Union*, 40 Cal. Rptr. 233; 394 P. 2d 921.

Three elements exist in the instant case to distinguish it from the cited cases; to wit, here, the injunction is sought and granted so that the trespass is narrowly enjoined;[1]

---

[1] The petition for immediate relief recites:

"O N E

"On January 21, 1965 this Honorable Court issued a fiat to the named Respondents ordering the request for an injunction to be set for a hearing at 9:30 Monday, January 25, 1965.

"T W O

"After receiving this notice actual or constructive, the Respondents [Clifford Taggart & Riley Hobbs (in ink)] have proceeded to constantly trespass upon the Complainant's property by marching or parading back and forth to the immediate doorway of the Complainant's place of business. Your Petitioner alleges that this conduct has been more intensive since the Court entertained the Complainant's petition and set the cause for hearing as described above and that such action on the part of the Respondents are at this time causing an irreparable injury to the Complainant in that the actions of the Respondents constitute obstructing customers from entering and leaving the Complainant's place of business and the Complainant alleges that the acts are outside the realms of peaceful picketing and constitute an immediate invasion of his property and his property rights contrary to the laws of the State of Alabama and the Constitution of the United States of America.

"T H R E E

"Your Complainant alleges that it is necessary to receive immediate injunctive relief to enjoin the continuous obstruct-

the trespass is on the premises of a single store owner; and the trespass obstructed customers using the entrances to the store. In none of the cited cases is the injunction so narrowly sought or granted.

In (1), the opinion indicated that the only witness testifying as to obstruction of access to the job site said that "his way was not blocked." 131 So. 2d at 252. In (2), it appears that there was no obstruction of entrances,

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ing of the doorway to the Complainant's shopping center and that the Petitioner has no adequate remedy at law other than the facilities of this Honorable Court by enjoining the Respondents from such acts.

"FOUR

"Your Complainant respectfully prays that this Honorable Court issue a temporary writ of injunction after requiring the Complainant to enter into a bond with good and sufficient sureties as required by this Honorable Court.

"WHEREFORE, your Petitioner respectfully prays that the allegations of the Petition filed in this Court in this original cause as of January 21, 1965 be adopted and made a part hereof and that this Honorable Court forthwith order the Respondents and agents, servants or employees [and any and all persons acting in concert with (in ink)] from trespassing upon the property of the Complainant and from further interfering with the Complainant's property and right of ingress and egress to the Complainant's property and place of business and grant unto the Complainant all other fit and proper relief that the Complainant might be entitled to and shows unto the Court that an irreparable injury will result unless this Honorable Court grant the relief as so prayed."

The command of the writ of injunction is:

"These, therefore, are to COMMAND AND STRICTLY ENJOIN you, and each of you, from—TRESPASSING UPON THE PROPERTY OF THE COMPLAINANT AND FROM FURTHER INTERFERING WITH THE COMPLAINANT'S PROPERTY AND RIGHT OF INGRESS AND EGRESS TO THE COMPLAINANT'S PROPERTY AND PLACE OF BUSINESS until the further orders of this Court. And this you will in no wise omit under penalty, &c."

and the picketing was not on property owned by or under control of the plaintiffs, and this is the case also in (3). In (4), the picketing was on the walkways of a shopping center which covered 46 acres with over 50 tenants, and picketing did not obstruct entrances. In (5), the activity was on the sidewalk of a company town and no obstruction was involved. In (6), the picketing was in a shopping center in which there were "numerous stores, banks and other enterprises." 363 P. 2d 803. Apparently the picketing was on the shopping center street and no entrance was obstructed. In (7), picketing was on sidewalks in a shopping center, and, also, so far as appears, without obstruction of entrances.

The court seems to justify the decision in *Logan Valley Plaza* on the conclusion that the shopping center streets had become quasi-public streets and the pickets would be disadvantaged if confined to the public streets outside the Mall. The premises of the instant complainant are not shown to have acquired the character of a town or business block as in *Marsh* and disadvantage to the pickets is not shown. Moreover, obstruction of customers using store entrances is present here but not in the cases cited by respondents.

It would be tempting to dispose of this case by saying that, because no person has suffered bodily assault or injury as a result of the activity here enjoined, the state court has no jurisdiction, but it appears to be our duty to dispose of the case the hard way as the reader of this opinion must have realized by now.

It is true that the evidence does not show that a blow has been struck or any blood shed, and, by some standards, the trespass or picketing may be described, perhaps correctly, as peaceful. The obstruction of a person's use of an entrance to a building by the presence of another person, however, can be accomplished only by using, or

threatening to use, physical force in some degree, large or small, depending on the restraint with which the persons involved govern their actions. Such obstruction can easily and quickly escalate into an affray which, even in the loose meaning of today's popular speech, cannot be properly called a peaceful affair.

Aside from the threat of violence which may be provoked by obstructing entrances, two cases support the conclusion that state jurisdiction over the trespass here enjoined has not been ousted. In *Moreland Corp. v. Retail Store Employees Union*, 16 Wis. 2d 499, 114 N. W. 2d 876, decided in 1962, the owner of a shopping center sought an injunction against picketing on a sidewalk in a shopping center. In deciding the issue of jurisdiction, the court said:

> ". . . . Even assuming the presence of the necessary federal jurisdictional requirements, the question of whether a state court may enjoin picketing as a trespass, in spite of arguable federal labor law pre-emption in other respects, has been expressly left open by the United States supreme court. *Amalgamated Meat Cutters & Butcher Workmen, Local No. 427, A.F.L. v. Fairlawn Meats, Inc.* (1957), 353 U.S. 20, 77 Sup. Ct. 604, 1 L. Ed. (2d) 613. We conclude that the courts of Wisconsin do have subject-matter jurisdiction to determine a controversy involving an alleged trespass by agents of a labor union. . . . .
>
> ". . . . . .
>
> "The issue is whether the respondent, because it has designed its private property for use as a shopping center, has lost its right to ban otherwise lawful picketing. If the record before us clearly established that the property involved is a multistore shopping center, with sidewalks simulated so as to appear to be public in nature, we would have no difficulty in reaching a

conclusion that the property rights of the shopping-center owner must yield to the rights of freedom of speech and communication which attend peaceful picketing. See *Freeman* v. *Retail Clerks Union Local No. 1207, supra* (concurring opinion). See also Notes, 1960 Duke Law Journal, 310; Note, 73 Harvard Law Review, 1216, and Note, 10 Stanford Law Review, 694. Compare, *Marsh* v. *Alabama* (1946), 326 U.S. 501, 66 Sup. Ct. 276, 90 L. Ed. 265, in which the United States supreme court held that the freedom of religion guaranteed by the First and Fourteenth amendments prevented the enforcement of a criminal-trespass statute against a person distributing religious pamphlets on the sidewalk of a company-owned town. See also *National L. R. Board* v. *Babcock & Wilcox Co.* (1956), 351 U.S. 105, 76 Sup. Ct. 679, 100 L. Ed. 975, a decision under the National Labor Management Relations Act involving the right of labor union representatives to circulate literature in an employer's private parking lot. . . .

"In weighing the parties' conflicting interests of private property and free speech, we would want to know the physical characteristics of the shopping center so that our decision on this important policy question could be applied with clarity to other disputes which might arise. On the record before us, the precise nature of the shopping center is not fully disclosed. There are *some* details in the pleadings and in the affidavits; also, the photograph of the store in question is in the record. However, we conclude that the record presents an insufficient basis upon which to enter a summary judgment for the appellants. There being material facts in issue which necessitate a trial, the trial court properly denied the appellants' motion for summary judgment." (16 Wis. 2d at pages 503, 505, and 506)

Moreland is cited by the Supreme Court of the United States in Note 15 of the opinion to support the conclusion of the court in *Logan Valley Plaza*.

In *Hood* v. *Stafford*, 213 Tenn. 684, 278 S. W. 2d 766, decided in 1964, there was a history of proceedings before the National Labor Relations Board. The opinion recites:

> "Prior to the sale of the Weingarten stores, this union had sought to organize the employees of Pic-Pac. As a result of this effort, the National Labor Relations Board held an election on October 4, 1961 for the purpose of determining whether the employees of Pic-Pac desired the union to represent them as bargaining agent. At this election, 19 out of 90 votes cast were in favor of representation by the union. The election was contested and, as far as the record shows, that matter was still pending before the N.L.R.B., at the time of the trial of this case in the Circuit Court.
>
> "It further appears that there are also two other matters which at the time of trial were undisposed of before the N.L.R.B. One pertains to the dismissal on September 16, 1961 by Pic-Pac of two employees, and the other relates to Weingarten and its handling of the sale to Pic-Pac and its discharge of its employees. Unfair labor practice charges were filed by Pic-Pac with the N.L.R.B., with reference to the activity in question in this case. These charges were dismissed by the Board and no complaint was issued." (378 S. W. 2d at pages 767 and 768)

A picket had been arrested and convicted for violating a city ordinance by her picketing which is described as follows:

> "The defendant and other pickets were on the parking area of the Pic-Pac Store at Highland and Summer.

They were wearing placards, distributing circulars, and soliciting prospective customers, seeking to persuade these members of the public not to trade with Pic-Pac. At times defendant and others walked back and forth in front of the door to the store, which defendant estimated to be 200 to 300 feet from the public sidewalk. At other times defendant was out in the parking area of the parking lot. The prosecutor testified that at times it was necessary for customers to step around the defendant and another picket in order to get in the door to the store. He stated that about one-third of those approaching the door turned away and did not enter the store after being approached by the defendant or another picket. The defendant stated she could not estimate the number of persons who turned around and left the premises as a result of her activities. She was asked to leave the premises before being arrested." (378 S. W. 2d at page 768)

The Tennessee Court held that state jurisdiction had not been ousted, saying, among other things:

"Probably the most direct authority dealing with the questions presented in the petition for certiorari is People v. Goduto, 21 Ill. 2d 605, 174 N. E. 2d 385 (1961), in which the defendants were convicted in the Chicago Municipal Court of criminal trespass. The defendants entered the parking area of a Sears, Roebuck store for the purpose of distributing union leaflets and questionnaires to employees of the store. The superintendent asked them to leave the premises several times but defendants refused. He then had them arrested. The question of whether or not federal legislation had divested the state courts of power to deal with the activity involved was presented. The Supreme Court of Illinois affirmed the judgment of the Municipal Court. The United States Supreme Court denied certiorari without comment in 368 U.S.

927, 82 S. Ct. 361, 7 L. Ed. 2d 290. The Illinois Court, in that case, recognized that when an activity is protected by Section 7, or prohibited by Section 8, of the National Labor Relations Act, the state must abstain from regulation and, further, that when the activity is arguably subject to Section 7 or Section 8 of the Act, the states must yield to the primary jurisdiction of the National Labor Relations Board. The Court then stated:

> " 'The defendants have made much of the fact that there was no violence in this case. We believe, however, that this was due to the fact that the company did not resort to self-help to remove defendants from the premises. The defendants were on property occupied by Sears, Roebuck and Company. The company's agent believing the defendants had no right to be on the property ordered them to leave three times. The defendants believing they had a right to be there refused to leave. At this point the company called the police. If the State had not taken charge of the situation, the company would have had no alternative but to forceably remove the defendants. We cannot know the amount of force that would have been necessary to remove them, but the threat of violence in such a situation is imminent. See e. g., Marshall Field & Co. v. National Labor Relations Board, 7 Cir., 200 F. 2d 375.
>
> " '.....' " (378 S. W. 2d at pages 769 and 770)

The activity enjoined in the instant case is neither protected by § 7 nor prohibited by § 8 of the National Labor Relations Act. We are of opinion that it is not reasonably arguable that the Congress intended to exclude the states from jurisdiction over trespass by picketing on privately owned property, which does not have the quasi-public

character of a town street or business block, in a manner so as to obstruct entrances to a store.

We hold that the trial court in the instant case did not err in deciding that it had jurisdiction.

The respondents say, in their second particular, that the court erred in enjoining their union picketing activity because they have a constitutional right to picket peacefully as an exercise of freedom of speech. Without further lengthening this opinion, we hold that the court did not err in this respect because picketing involves something more than free speech, and because the right to picket must be balanced against the right of the owner to use his property in a lawful manner and the interest of the state in restraining trespass which is a potential cause of violence. So far as this record discloses, picketing on the streets abutting complainant's store lot is not materially less effective than picketing on the lot itself.

AFFIRMED.

Livingston, C. J., and Simpson and Kohn, JJ., concur.

Judgment of the Supreme Court of Alabama

SUPREME COURT OF ALABAMA —THURSDAY, SEPTEMBER 19, 1968

THE COURT MET IN SPECIAL SESSION PURSUANT TO ADJOURNMENT

PRESENT: CHIEF JUSTICE LIVINGSTON AND ASSOCIATE JUSTICES LAWSON, SIMPSON, MERRILL, COLEMAN AND HARWOOD. ASSOCIATE JUSTICE KOHN NOT PRESENT.

1st Div. 295

CLIFFORD TAGGART, ET AL.

v.

WEINACKER'S, INC., a Corp.

MOBILE CIRCUIT COURT, IN EQUITY

Come the parties by attorneys and the record and matters therein assigned for errors being argued and submitted on motion and merits and duly examined and understood by the Court, it is considered that in the record and proceedings of the Circuit Court there is no error.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the decree of the Circuit Court be in all things affirmed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the appellants, Clifford E. Taggart and Retail Clerks' Union Local No. 458, and Reliance Insurance Company, surety for the costs of appeal, pay the costs accruing on said appeal in this Court and in the Court below, for which costs let execution issue.

The Supreme Court of Alabama — Thursday, November 7, 1968

[Caption omitted]

IT IS ORDERED that the application for rehearing filed on September 30, 1968 be and the same is hereby overruled.